

3-3-87
Vol. 52 No. 41
Pages 6317-6492

Tuesday
March 3, 1987

Federal Register

Briefings on How To Use the Federal Register—
For information on briefings in Houston, TX, Atlanta, GA,
and Washington, DC, see announcement on the inside
cover of this issue.



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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

HOUSTON, TX

- WHEN:** March 10; at 9 am.
- WHERE:** Room 4415, Federal Building, 515 Rusk Avenue, Houston, TX.
- RESERVATIONS:** Call the Houston Federal Information Center on the following local numbers:
- | | |
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| Houston | 713-229-2552 |
| Austin | 512-472-5495 |
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ATLANTA, GA

- WHEN:** March 26; at 9 am.
- WHERE:** L.D. Strom Auditorium, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA.
- RESERVATIONS:** Call the Atlanta Federal Information Center, 404-331-2170.

WASHINGTON, DC

- WHEN:** March 31; at 9 am.
- WHERE:** Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
- RESERVATIONS:** Beverly Fayson, 202-523-3517

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Rules and Regulations

Federal Register

Vol. 52, No. 41

Tuesday, March 3, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1102 and 1106

[Docket Nos. AO-237-A34 and AO-210-A45]

Milk in the Southwest Plains and Fort Smith, AR, Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action expands the Southwest Plains marketing area to include 18 counties and the Fort Leonard Wood Military Reservation in southwest Missouri and 11 counties in northwest Arkansas. This added territory includes the current Fort Smith, Arkansas, marketing area. The expanded area is included in three pricing zones that maintain the current price levels in such territory. The amended order also provides lower delivery standards for regulated plants operated by cooperative associations. All other regulatory provisions of the current Southwest Plains order will apply.

The amendments are necessary to reflect structural changes in the market and to assure the orderly marketing of milk in the expanded Southwest Plains marketing area. The changes adopted herein, which were submitted and supported by cooperative associations that represent a substantial proportion of producers who supply the market, are based on the record of a public hearing held in Tulsa, Oklahoma, on November 6, 1985. Also, a reopened session of the hearing was held in Irving, Texas on March 4-7, 1986, to consider proposals to change the location adjustment provisions of seven orders to conform with the Class I differentials mandated by the Food Security Act of 1985 that

were implemented on May 1, 1986. The location adjustment provisions of the Southwest Plains order were amended on the basis of evidence presented at the reopened hearing. Such amendments are incorporated in the order for the merged and expanded Southwest Plains marketing area. Dairy farmers through their respective cooperative associations have approved the issuance of the amended order.

EFFECTIVE DATE: May 1, 1987.

FOR FURTHER INFORMATION CONTACT:

John F. Borovics, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued September 20, 1985; published September 26, 1985 (50 FR 39017).

Notice of Reopened Hearing: Issued February 14, 1986; published February 21, 1986 (51 FR 6254).

Temporary Revision: Issued February 20, 1986; published February 26, 1986 (51 FR 6730).

Suspension Order: Issued February 24, 1986; published March 3, 1986 (51 FR 7245).

Tentative Decision: Issued July 9, 1986; published July 15, 1986 (51 FR 25539).

Interim Amendments: Issued August 5, 1986; published August 11, 1986 (51 FR 28687).

Final Decision: Issued October 30, 1986; published November 5, 1986 (51 FR 40176).

Recommended Decision: Issued December 4, 1986; published December 9, 1986 (51 FR 44299).

Order Amending Orders: Issued December 5, 1986; published December 11, 1986 (51 FR 44590).

Correction to Amending Orders: Published December 19, 1986 (51 FR 45575).

Correction to Amending Orders: Published December 24, 1986 (51 FR 46746).

Final Decision: Issued February 10, 1987; published February 17, 1987 (52 FR 4775).

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and

determinations previously made in connection with the issuance of each of the aforesaid orders, and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings

A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Southwest Plains and Fort Smith, Arkansas marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The attached order, which amends and merges the aforesaid orders, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the expanded Southwest Plains marketing area, and the minimum prices specified in such Southwest Plains order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The expanded Southwest Plains order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the expanded Southwest Plains order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market

administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, six cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1106.85 of the order for the expanded Southwest Plains marketing area.

(b) Determinations

It is hereby determined that: (1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within the merged and expanded Southwest Plains marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, which amends and merges the aforesaid orders, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the expanded Southwest Plains order as hereby amended; and

(3) The issuance of the merged and expanded Southwest Plains order is approved or favored by more than the required two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Parts 1102 and 1106

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof the handling of milk in the Southwest Plains and Fort Smith, Arkansas marketing areas (Parts 1106 and 1102) shall be amended and merged into one order. Part 1102 is thereby superseded and such vacated part designation shall be reserved for future assignment. The handling of milk in the merged and expanded Southwest Plains marketing area (Part 1106) shall be in conformity to and in compliance with the terms and conditions of the Southwest Plains order, as amended, and as hereby further amended, as follows:

1. The authority citation for 7 CFR Parts 1102 and 1106 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

PART 1102—MILK IN THE FORT SMITH, ARKANSAS MARKETING AREA [REMOVED AND RESERVED]

2. Part 1102 (which now regulates the handling of milk in the Fort Smith, Arkansas marketing area) is removed and such vacated Part designation is reserved for future assignment.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

3. The temporary revision issued February 20, 1986, and published February 26, 1986 (51 FR 6730) and the suspension order issued February 24, 1986, and published March 3, 1986 (51 FR 7245), which were to remain in effect until this proceeding had been completed, are hereby terminated.

4. In § 1106.2, Zone I is revised and two new zones (Zones VI and VII) are added to read as follows:

§ 1106.2 Southwest Plains marketing area.

Zone I—In the State of Oklahoma

Caddo	Lincoln
Canadian	McClain
Cleveland	McIntosh
Coal	Okfuskee
Garvin	Oklahoma
Grady	Pittsburg
Haskell	Pontotoc
Hughes	Pottawatomie
Latimer	Seminole
LeFlore	Sequoyah

In the State of Arkansas

Crawford	Scott
Franklin	Sebastian
Logan	

Zone VI—In the State of Arkansas

Benton	Madison
Boone	Marion
Carroll	Washington

Zone VII—In the State of Missouri

Barry	Ozark
Cedar	Polk
Christian	Pulaski (Fort Leonard Wood Military Reservation only)
Dade	Stone
Dallas	Taney
Douglas	Texas
Greene	Webster
Howell	Wright
Laclede	
Lawrence	
McDonald	

5. In § 1106.7, paragraph (c) introductory text is revised to read as follows:

§ 1106.7 Pool plant.

(c) Any plant located in the marketing area or in a county adjacent to the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested by the cooperative association and during the month, or the 12-month period ending with the immediately preceding month, 45 percent or more of the producer milk of members of the cooperative association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products at plants specified in paragraph (a) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

6. In § 1106.52, in paragraph (a)(1), Zones VI and VII are added at the end of the table of location adjustments and paragraphs (a)(3)(i) and (a)(4) are revised to read as follows:

§ 1106.52 Plant location adjustments for handlers.

(a) ***

(1) ***

	Adjustment per hundredweight
Zone VI.....	Minus 22 cents
Zone VII.....	Minus 58 cents

(3) ***

(i) *Minus 58 cents.* In the county of Butler, Carter, Crawford, Dent, Dunklin, Gasconade, Iron, Madison, Maries, Mississippi, New Madrid, Oregon, Pemiscot, Phelps, Pulaski (except Fort Leonard Wood Military Reservation), Reynolds, Ripley, Scott, Shannon, Stoddard, or Wayne.

(4) For a plant located in the State of Arkansas but outside the marketing area, the adjustment shall be the difference (plus or minus) between the applicable Class I price effective at such plant location under the Central Arkansas order (Part 1108) and the Class I price specified in § 1106.50(a).

Effective date: May 1, 1987.

Signed at Washington, DC, on: February 25, 1987.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 87-4363 Filed 3-2-87; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1951

Implementation of Internal Revenue Service (IRS) Offset

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to establish procedures for referring to the Secretary of the Treasury delinquent amounts owed to FmHA for collection by offset against Federal income tax refunds. Due to the immediate need for these procedures, and their brief duration, FmHA is publishing the procedures as an interim rule without request for comments. These regulations are intended to strengthen the ability of the FmHA to collect delinquent debts.

EFFECTIVE DATE: March 3, 1987. This interim rule expires on July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Bob Nelson, Management Analyst, Financial and Management Analysis Staff, Farmers Home Administration, U.S. Department of Agriculture, Room 5427, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone (202) 475-4705.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "non-major." It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal

action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410—Low Income Housing Loans (Section 502 Rural Housing Loans). For the reasons set forth in the Final rule and related Notice(s) to 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983), this activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

FmHA is implementing this interim rule immediately. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking due to the immediate need to establish procedures the Agency will follow to implement the authority for Federal agencies to refer delinquent amounts to the Department of the Treasury for collection by offset against tax refunds owed to named persons. See 31 U.S.C. 3720A. Under this authority, the Internal Revenue Service (IRS) may collect by offset against refunds payable after December 31, 1985 and before January 1, 1988 debts referred by Federal agencies (26 U.S.C. 6402(d); Pub. L. 98-369, 2653(c), 98 Stat. 1158). This regulation interprets Treasury regulations and must be published immediately, (1) in order to meet the requirements for coordinating the agency's actions with those to be taken with IRS, and (2) because under the Debt Collection Act, the 2 year program ends with the 1986 tax year.

List of Subjects in 7 CFR Part 1951

Account servicing and low and moderate income housing loans—Servicing.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 is revised to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 31 U.S.C. 3720A, 7 CFR 2.23 & 7 CFR 2.70

Subpart G—Borrowers Supervision, Servicing and Collection of Single Family Housing Loan Accounts

2. Section 1951.304 is added to read as follows:

§ 1951.304 Internal Revenue Service (IRS) offset.

The Internal Revenue Service (IRS) can reduce a taxpayer's overpayment of tax by the amount of any legally enforceable debt owed to a Federal agency. This section establishes policies and procedures to implement IRS offsets, and is in effect through June 30, 1987.

(a) Each borrower who is 3 payments or more delinquent (or, for annual payment borrowers, the equivalent of 3 monthly payments delinquent) will have been so notified by FmHA. Borrowers will be excluded from offset for any of the following reasons:

(1) Borrowers who are under the jurisdiction of a bankruptcy court or have had their FmHA debts discharged in bankruptcy.

(2) Borrowers who are Federal employees.

(3) Borrowers whose cases have been referred to the Office of the General Counsel (OGC) for foreclosure.

(4) Borrowers whose accounts are coded in suspense due to transactions pending, unless the County Office is aware that the account is definitely 3 payments or more delinquent.

(5) Borrowers who are currently on a moratorium.

(6) Borrowers who are less than 3 payments behind on their monthly installment with an Additional Partial Payment Agreement (APPA).

(7) Borrowers who have not provided a Social Security Number (SSN) and no SSN can be obtained.

(8) Amount of borrower delinquency is less than \$25.

(9) Borrowers who are delinquent only for debts incurred under the Section 504 Very Low Income Housing Repair Loan Program.

(10) Account has been delinquent for more than 9 years.

(11) The account has not been reported to a consumer credit reporting agency.

(b) The letter to each borrower notifying of FmHA's intention to exercise offset informs the borrower of the procedure for requesting a review of FmHA's decision. The notification letter also informs borrowers that their accounts are delinquent, the IRS will reduce the amount of any tax refund check by the amount of the delinquency, and they have 60 days from the date

they receive the letter to provide, in writing, to the County Supervisor evidence that their debt is less than 3 payments delinquent or that their debt is not legally enforceable.

(c) If a borrower has requested a review within 60 days from the date of receipt of the letter, the FmHA County Supervisor for the office responsible for that account reviews the borrower's reasons for believing that the debt is either less than 3 payments delinquent or, with OGC's assistance, not legally enforceable. After the County Supervisor's review, the borrower will be informed of FmHA's decision. Borrowers who reduce their debt to less than 3 payments delinquent during the 60-day due process period will be deleted.

(d) FmHA will notify IRS of those accounts against which offset will be taken.

(e) Changes in borrower status that eliminate the borrower from IRS offset will be reported to IRS by FmHA and the borrower's refund will not be offset.

(f) After IRS effects an offset, IRS will notify FmHA. The appropriate FmHA County Supervisor will carefully review the list of borrowers against whom offset has been exercised in his/her jurisdiction to ensure that no borrower who should have been eliminated from offset was subjected to an offset. If the offset was not correct, the FmHA County Supervisor will cause a refund to be processed in the amount of the excess offset.

(g) The collection of information requirements in this section have been approved by the Office of Management and Budget and assigned OMB control number 0575-0122.

Dated: January 14, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87-4411 Filed 3-2-87; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 245 and 249

Adjustment of Status to That of Persons Admitted for Permanent Residence; Creation of Records of Lawful Admission for Permanent Residence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: On November 6, 1986, the President signed Pub. L. 99-603, the Immigration Reform and Control Act (IRCA). This interim rule is designed to implement sections 117, 202, and 203 of the IRCA, which became effective upon signature. Section 117 contains prohibitions on adjustment to lawful permanent resident status by certain individuals. Section 202 provides for adjustment to lawful permanent resident status by certain nationals of Cuba and Haiti. Section 203 changes the registry date for creation of a record of lawful permanent residence from June 30, 1948 to January 1, 1972.

DATES: Interim rule effective November 6, 1986. Comments must be received on or before May 4, 1987.

ADDRESS: Submit written comments, in duplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW, Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Joseph D. Cuddihy, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536, Telephone (202) 633-3320.

SUPPLEMENTARY INFORMATION: Section 117 of the IRCA amended section 245(c) of the Immigration and Nationality Act (INA) to prohibit adjustment to lawful permanent resident status within the United States by two additional groups of individuals: those who have failed to maintain legal immigration status on the date their adjustment of status applications are filed, and those who have failed (other than through no fault of their own for technical reasons) to maintain continuously a legal status since entry into the United States. The amendment does not preclude these individuals from departing from the United States, obtaining immigrant visas at a United States embassy or consulate, and reentering the United States as immigrants. The restrictions do not apply to individuals who seek adjustment of status after qualifying as immediate relatives or special immigrants as defined in sections 201(b) and 101(a)(27)(H) of the INA, respectively. This interim rule defines terminology introduced into the INA by section 117 of the IRCA, and clarifies Service policy as to the effect of a departure and subsequent reentry of an individual into the United States with regard to that section.

In defining the terms in § 245.1(c), the Service was guided by Congressional intent as stated in the Report of the

Committee on the Judiciary of the United States Senate on S. 1200, "to make adjustment of status a much less frequently used method of obtaining permanent resident status in the United States." The term "legal immigration status" is therefore limited to the specific groups of individuals who are included in the definition. Individuals who are in voluntary departure status (including extended voluntary departure) as defined in section 242(b) of the INA are not in legal immigration status, as one of the prerequisites of that status is that the applicant must admit to belonging to a class of aliens who are deportable under Part 241. An applicant who has been reinstated to student status in accordance with § 214.2(f)(12) has not maintained legal immigration status, as such an individual must have violated status in order to be reinstated. (As discussed below, however, in some cases a student may be able to establish that the failure was "through no fault of his own for technical reasons.") A nonimmigrant student or exchange visitor who is considered in status by regulation for a period of time after completion of his or her educational objective or program is in "legal immigration status" during that time period. An individual who has been authorized "satisfactory departure" in accordance with § 214.1(c)(5) is also in legal immigration status.

The term "other than through no fault of [the applicant's] own for technical reasons" has been defined to describe three types of situations. The first, over which the applicant has no control, would not include situations such as an employer's delay in completing required documents to give to the applicant for submission to the Service. An applicant who fails to maintain status because he or she is awaiting a decision on a labor certification request from the Department of Labor or a visa petition from the Service before filing an application for adjustment has not failed to maintain "through no fault of his own for technical reasons" and is ineligible to adjust. The examples given in the regulation are not intended to be all-inclusive.

Section 245.1(c)(3) of the regulation, concerning the departure and subsequent reentry of an individual employed without authorization, is a statement of existing Service policy which has not previously been incorporated into regulation. The preclusion of individuals who have previously been out of status from adjusting after a subsequent reentry is consistent with the legislative intent to limit adjustments. Without this

provision, an individual who was not in lawful status or had failed to maintain lawful status could depart from the United States and immediately reenter, thereby becoming eligible to file for adjustment of status, making the prohibition virtually a dead letter. The Service's position is that it was not the intent of Congress to allow such an action to overcome the adjustment prohibition.

For administrative purposes, the Service does not intend to apply the regulations concerning additional classes of aliens ineligible for adjustment of status in the case of any alien whose application for adjustment was pending on November 6, 1986. Thus, an applicant for adjustment who filed prior to November 6, 1986 will have his or her application adjudicated in accordance with the regulations in effect at that time. Individuals whose applications for adjustment of status are filed on or after November 6, 1986, will have their applications decided in accordance with the regulations promulgated in this notice.

It is noted that the Senate Committee expects that the government will not "respond to the new limitations on adjustment of status by making special arrangements enabling aliens who are not nationals of countries which border on the United States to obtain immigrant visas in such countries." This practice, commonly called Stateside Criteria Processing, was last restructured by the Department of State, Bureau of Consular Affairs, in Bulletin Number 38, Volume V, effective June 1, 1983. As that policy is written, individuals who are ineligible to adjust solely because of this added provision would be ineligible for Stateside Criteria Processing, while individuals who are ineligible to adjust because of this provision in addition to some other provision listed in the policy would be eligible for Stateside Criteria Processing.

Section 202 of the IRCA provides for the adjustment of status to lawful permanent residence of certain nationals of Cuba and Haiti. A new section 245.6 is being added to Part 245 to establish the classes of aliens eligible, the eligibility criteria, and the application procedures. This section also defines terminology that is not used in the INA and describes procedures for the Service in rendering a decision and for the applicant in appealing the Service's decision. It should be noted that the new § 245.6 contains no provisions for the adjustment of a non-Cuban or non-Haitian spouse or child of a principal alien, as there was no provision for this contained in the

legislation. The Service will be providing supplementary instruction sheets to the I-485 application in Spanish and Creole. Forms G-325A and FD-258 and the results of the medical examination will be used to determine possible excludability under the applicable paragraphs of section 212(a) of the INA, and are therefore required to be submitted with the application. Form I-643 is a statistical data sheet to provide statistical, sociological, and demographic information to the Department of Health and Human Services concerning the applicants. Information contained on the form does not affect eligibility for adjustment of status. No application will be denied because of failure to provide statistical information requested on Form I-643. Form I-643 will be used for statistical purposes only and will not be retained by the Service. The paragraphs of the INA that are waived pursuant to section 202 of IRCA are enumerated in § 245.6(c)(2), and include paragraphs (14), the requirement for a labor certification; (15), public charge; (16), exclusion; (17), deportation; (20), documentary requirement of an immigrant visa; (21), requirement of a visa petition; (25), illiteracy; and (32), exclusion of certain graduates of foreign medical schools.

Section 203 of the IRCA amended section 249 of the INA to update the registry date for the creation of a record of lawful permanent residence for certain individuals who entered the United States before January 1, 1972. The date had previously been set at June 30, 1948. The regulations at § 249.2 have been revised to reflect this new date and to remove sexist language.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date are impracticable and unnecessary as the changes have been mandated by the passage of Pub. L. 99-603.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects

8 CFR Part 245

Aliens; Immigration; Reporting and recordkeeping requirements.

8 CFR Part 249

Aliens; Immigration; Reporting and recordkeeping requirements.

Accordingly, Chapter 1 of Title 8, Code of Federal Regulations, is amended to read as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for Part 245 continues to read as follows:

Authority: Secs. 101, 103, 201, 203, 204, 212, 245, 247; 66 Stat. 166, 173, 175, 178, 179, 182, 217 and 218 (8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1255 and 1257).

2. In § 245.1, paragraphs (b)(5), (b)(6), (b)(7) and (b)(8) are redesignated paragraphs (b)(7) through (b)(10), respectively, and new paragraphs (b)(5) and (b)(6) are added to read as follows:

§ 245.1 Eligibility.

* * *

(b) * * *

(5) Any alien who on or after November 6, 1986 is not in legal immigration status on the date of filing his or her application for adjustment of status, except an applicant who is an immediate relative as defined in section 201(b) or a special immigrant as defined in section 101(a)(27)(H);

(6) Any alien who files an application for adjustment of status on or after November 6, 1986, who has failed (other than through no fault of his or her own for technical reasons) to maintain continuously a legal status since entry into the United States, except an applicant who is an immediate relative as defined in section 201(b) of the Act or a special immigrant as defined in section 101(a)(27)(H) of the Act;

* * *

§ 245.1 [Amended]

3. In § 245.1, paragraphs (c) through (f) are redesignated paragraphs (d) through (g), respectively, and a new paragraph (c) is added to read as follows:

* * *

(c) *Definitions*—(1) *Legal Immigration Status*. For purposes of section 245(c)(2) of the Act, the term "legal immigration status" is limited to individuals who are:

(i) In lawful permanent resident status;

(ii) Admitted in nonimmigrant status as defined in section 101(a)(15) of the Act, or whose nonimmigrant status has been extended in accordance with Part 214 of this chapter;

(iii) In refugee status under section 207 of the Act, such status not having been revoked;

(iv) In asylee status under section 208 of the Act, such status not having been revoked; or

(v) In parole status which has not expired.

(2) *No fault of the applicant for technical reasons*. The parenthetical phrase "other than through no fault of

his or her own for technical reasons" shall be limited to:

(i) Inaction of another individual or organization designated by regulation to act on behalf of an individual and over whose actions the individual has no control, if the inaction is acknowledged by that individual or organization (as, for example, where a designated school official certified under § 214.2(f) of this chapter or an exchange program sponsor under § 214.2(j) of this chapter did not provide required notification to the Service of continuation of status, or did not forward a request for continuation of status to the Service); or

(ii) A technical violation resulting from inaction of the Service (as, for example, where an applicant establishes that he or she properly filed a timely request to maintain status and the Service has not yet acted on that request). An individual whose refugee status or asylee status has expired through passage of time, but whose status has not been revoked, will be considered to have gone out of status "through no fault of his or her own for technical reasons."

(iii) A technical violation caused by the physical inability of the applicant to request an extension of nonimmigrant stay from the Service either in person or by mail (as, for example, an individual who is hospitalized with an illness at the time nonimmigrant stay expires). The explanation of such a technical violation shall be accompanied by a letter explaining the circumstances from the hospital or attending physician.

(3) *Effect of departure.* The departure and subsequent reentry of an individual who was employed without authorization in the United States after January 1, 1977 does not erase the bar to adjustment of status in section 245(c)(2) of the Act. Similarly, the departure and subsequent reentry of an individual who has not maintained a legal immigration status on any previous entry into the United States does not erase the bar to adjustment of status in section 245(c)(2) of the Act for any application filed on or after November 6, 1986.

* * *

§§ 245.6-245.8 [Redesignated as §§ 245.7-245.9]

4. Sections 245.6 through 245.8 are redesignated § 245.7 through 245.9 respectively, and a new § 245.6 is added to read as follows:

§ 245.6 Adjustment of status of certain Cuban and Haitian nationals under the Immigration Reform and Control Act of 1986 (Pub. L. 99-603).

(a) *Application.* Each person applying for the benefit of adjustment of status

under section 202 of Pub. L. 99-603 must file Form I-485 (Application for Lawful Permanent Residence) with the district director having jurisdiction over the applicant's place of residence. Each applicant must file a separate application form without fee. Each application shall be accompanied by Form I-643 (Health and Human Services Statistical Data Sheet), the results of a medical examination given in accordance with § 245.8 of this Part, and, if the applicant has reached his or her 14th birthday but is not over 79 years of age, Form G-325A and an applicant fingerprint card (Form FD-258). No application for benefits under section 202 of Pub. L. 99-603 may be filed after November 5, 1988.

(b) *Classes of Aliens Eligible to Apply for Adjustment.* The following groups of individuals are eligible to apply for adjustment of status under section 202 of Pub. L. 99-603:

(1) Any alien who had received the designation Cuban/Haitian Entrant (Status Pending) as of November 6, 1986;

(2) Any alien who is a national of Cuba or Haiti, who arrived in the United States prior to January 1, 1982, with respect to whom any record was established by the Service prior to January 1, 1982, and who was not admitted to the United States as a nonimmigrant;

(3) Any alien who is a national of Cuba or Haiti who arrived in the United States prior to January 1, 1982, whether or not admitted as a nonimmigrant, who had filed an application for asylum with the Service prior to January 1, 1982.

(c) *Eligibility.* Benefits under section 202 of Pub. L. 99-603 are limited to any alien described in paragraph (b) of this section who:

(1) Applies for such adjustment in accordance with paragraph (a);

(2) Is eligible for an immigrant visa and otherwise admissible to the United States under section 212(a) of the Act, except for paragraphs (14), (15), (16), (17), (20), (21), (25), and (32), which do not apply;

(3) Is not an alien described in section 243(h) of the Act;

(4) Is physically present in the United States on the date the application for adjustment is filed; and

(5) Has continuously resided in the United States since January 1, 1982.

(d) *Definitions.*—(1) *Record.* The term "record" as used in section 202 of Pub. L. 99-603 shall be defined as in § 103.8 of this chapter.

(2) *Continuously resided.* The term "continuously resided" as used in section 202 of Pub. L. 99-603 shall have the same meaning as the term "resided continuously" as used in section 201 of

Pub. L. 99-603. Pending publication of regulations defining that term after the consultation with Congress required under paragraph (g)(1) of section 201, applications under section 202 from individuals who have departed from the United States will be held in abeyance.

(e) *Decision.* The applicant shall be notified of the decision of the district director and, if the application is denied, the reason for the denial. If the application is approved, the applicant's permanent residence shall be recorded as of January 1, 1982. The application shall be approved without the requirement that the Secretary of State reduce the number of visas available under section 201 of the Act. The provisions of section 245(c) of the Act do not apply to applicants under this section. Adjustment of status under this section shall not affect the applicant's eligibility for benefits under section 501 of Pub. L. 96-422 (Fascell-Stone benefits). If the application is denied, the applicant has the right to appeal the decision under the provisions of Part 103 of this chapter. No fee shall be required for the filing of an appeal.

PART 249—CREATION OF RECORDS OF LAWFUL ADMISSION FOR PERMANENT RESIDENCE

5. The authority citation for Part 249 continues to read as follows:

Authority: Secs. 103, 212, 249 of the INA as amended (8 U.S.C. 1103, 1182, 1259).

6. Section 249.2 is revised to read as follows:

§ 249.2 Application.

(a) *Jurisdiction.* An application by an alien who has been served with an order to show cause or warrant of arrest shall be considered only in proceedings under Part 242 of this chapter. In any other case, an alien who believes he or she meets the eligibility requirements of section 249 of the Act shall apply to the district director having jurisdiction over his or her place of residence. The application shall be made on Form I-485 and shall be accompanied by Form G-325A, which shall be considered part of the application. The application shall also be accompanied by documentary evidence establishing continuous residence in the United States since prior to January 1, 1972, or since entry and prior to July 1, 1924. All documents must be submitted in accordance with § 103.2(b) of this chapter. Documentary evidence may include any records of official or personal transactions or recordings of events occurring during the period of claimed residence. Affidavits of credible witnesses may

also be accepted. Persons unemployed and unable to furnish evidence in their own names may furnish evidence in the names of parents or other persons with whom they have been living, if affidavits of the parents or other persons are submitted attesting to the residence. The numerical limitations of sections 201 and 202 of the Act shall not apply.

(b) *Decision.* The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor. If the application is granted, a Form I-551, showing that the applicant has acquired the status of an alien lawfully admitted for permanent residence, shall not be issued until the applicant surrenders any other document in his or her possession evidencing compliance with the alien registration requirements of former or existing law. No appeal shall lie from the denial of an application by the district director, but such denial shall be without prejudice to the alien's right to renew the application in proceedings under Part 242 of this chapter.

Dated: February 17, 1987.

R. Michael Miller,

Acting Associate Commissioner,
Examinations, Immigration and
Naturalization Service.

[FR Doc. 87-4356 Filed 3-2-87; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Red No. 33 and D&C Red No. 36; Postponement of Closing Date

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red No. 33 and D&C Red No. 36 for use as color additives in drugs and cosmetics. The new closing date will be May 4, 1987. FDA has decided that this brief postponement is necessary to provide time for the preparation of documents that will explain the bases for the agency's decisions concerning the conditions under which these color additives may be safely used.

EFFECTIVE DATE: Effective March 3, 1987, the new closing date for D&C Red No. 33 and D&C Red No. 36 will be May 4, 1987.

FOR FURTHER INFORMATION CONTACT:
Gerard L. McCowin, Center for Food
Safety and Applied Nutrition (HFF-330),
Food and Drug Administration, 200 C St.
SW., Washington, DC 20204, 202-472-
5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of March 3, 1987, for the provisional listing of D&C Red No. 33 and D&C Red No. 36 by regulation published in the *Federal Register* of September 4, 1985 (50 FR 35783). FDA extended the closing date for these color additives until March 3, 1987, to provide time for submission of further information, for completion of the agency's review and evaluation of the data concerning the drug and cosmetic uses of these color additives, and for publication of a regulation in the *Federal Register* regarding the agency's final decision on the petitions for the permanent listing of these color additives. The regulation set forth below will postpone the March 3, 1987, closing date for the provisional listing of these color additives until May 4, 1987.

FDA has essentially completed its review and evaluation of available information relevant to the use of these color additives in drugs and cosmetics. The agency has concluded that the drug and cosmetic uses of D&C Red No. 33 and D&C Red No. 36 are safe. Thus, the agency has decided to permanently list the color additives for these uses. New certification specifications are also being developed for these color additives.

The agency has not yet completed documents fully describing the bases for each of these decisions and setting forth detailed conditions for use. Therefore, FDA believes that it is reasonable to postpone the closing date for these color additives until May 4, 1987, to provide time for the preparation and publication of appropriate *Federal Register* documents. The agency intends to publish these documents as soon as possible, but not later than May 4, 1987. FDA concludes that this short extension is consistent with the public health and the standards set forth for continuation of provisional listing in *McIlwain v. Hayes*, 690 F.2d 1041 (D.C. Cir. 1982).

Because of the shortness of time until the March 3, 1987, closing date, FDA concludes that notice and public procedure on this regulation are impracticable and that good cause exists for issuing the postponement as a final rule and for an effective date of March 3, 1987. This regulation will permit the uninterrupted use of these color additives until further action is taken. In accordance with 5 U.S.C. 553 (b) and (d)(1) and (3), this postponement

is issued as a final regulation, effective on March 3, 1987.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. In § 81.1 *Provisional lists of color additives* by revising the closing dates for "D&C Red No. 33" and "D&C Red No. 36" in paragraph (b) to read "May 4, 1987".

§ 81.27 [Amended]

3. In § 81.27 *Conditions of provisional listing* by revising the closing dates for "D&C Red No. 33" and "D&C Red No. 36" in paragraph (d) to read "May 4, 1987".

Dated: February 27, 1987.

John M. Taylor,

Associate Commissioner for Regulatory
Affairs.

February 27, 1987.

[FR Doc. 87-4503 Filed 2-27-87; 2:30 pm]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 86F-0185]

Indirect Food Additives; Stabilizers

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for additional uses of N,N'-hexamethylenebis (3,5-di-tert-butyl-4-hydroxyhydrocinnamamide) as a stabilizer in articles or components of articles intended to contact food. This

action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective April 2, 1987; objections by April 2, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of May 27, 1986 (51 FR 19087), FDA announced that a petition (FAP 6B3927) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for additional uses of N,N'-hexamethylenebis (3,5-di-*tert*-butyl-4-hydroxyhydrocinnamamide) as a stabilizer in articles or components of articles intended to contact food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the additive is safe for the proposed uses, and that the food additive regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any

time on or before April 2, 1987 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 340); 21 CFR 5.10 and 5.61.

2. In § 178.2010 paragraph (b) is amended in the entry "N,N'-hexamethylenebis (3,5-di-*tert*-butyl-4-hydroxyhydrocinnamamide)" by adding new entries 3, 4, and 5 to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

(b) * * *

Substances	Limitations
N,N'-Hexamethylenebis (3,5-di- <i>tert</i> -butyl-4-hydroxyhydrocinnamamide) (CAS Reg. No. 23128-74-7).	For use only: <ol style="list-style-type: none"> At levels not to exceed 0.6 percent by weight of polyester resins complying with § 175.300(b)(3)(vii) of this chapter. At levels not to exceed 0.6 percent by weight of closures with sealing gaskets complying with § 177.1210 of this chapter. At levels not to exceed 0.6 percent by weight of repeated use rubber articles complying with § 177.2600 of this chapter.

Dated: January 21, 1987.

Richard J. Ronk,
Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-4348 Filed 3-2-87; 8:45 am]

BILLING CODE 4150-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On August 20, 1985, the Wisconsin Department of Natural Resources (WDNR) submitted a revision to its ozone State Implementation Plan (SIP) for Continental Can Company (Continental Can). This revision was in the form of a variance for Continental Can, containing internal offsets in conjunction with daily weighted emission limits at Continental Can's Milwaukee and Racine can manufacturing plants.

On September 9, 1986 (51 FR 32075), USEPA announced a "direct final" approval of this revision, unless adverse comments were received. USEPA subsequently received a request for an opportunity to submit an adverse and critical comment. USEPA is today withdrawing its approval of this revision for Continental Can.

EFFECTIVE DATE: March 3, 1987.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V Office.)

United States Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707

Gary Gulezian, Chief, Analysis Section, Air and Radiation Branch, Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT:

Uylaine E. MaMahan, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On August 20, 1985, the WDNR submitted a revision to its ozone SIP for Continental Can. This revision is in the form of a variance for six can coating lines at the Continental Can's Milwaukee plant and two can coating lines at the Continental Can's Racine plant; both plants are located in Wisconsin. On September 9, 1986 (51 FR 32075), USEPA announced a "direct final" approval of this revision to the Wisconsin SIP, unless adverse or critical comments were received. The reader is referred to this notice for further information about this revision.

In the approved notice of September 9, 1986, USEPA advised the public that it was deferring the effective date of its approval for 60 days, until November 10, 1986, to provide an opportunity for the public to submit comments on this revision. USEPA also announced that, if within 30 days of publication of the notice of approval it received notice that someone wanted to submit an adverse or critical comment, we would withdraw the approval and being a new rule by proposing action and by establishing a 30-day comment period.

USEPA has received notice that a member of the public wants to submit an adverse or critical comment on the revision pertaining to Continental Can.

Therefore, in accordance with the procedure described above, USEPA is today withdrawing its September 9, 1986, approval of the internal offsets for Continental Can's Milwaukee and Racine Plants.

USEPA is withdrawing this action without providing prior notice or opportunity to comment. USEPA finds that it has good cause within the meaning of 5 U.S.C. 553(b) to proceed without notice and comment. Notice and comment would be impractical because USEPA needs to withdraw its approval as quickly as possible in order to consider the comments which members

of the public want to submit. Moreover, further notice is not necessary because USEPA has already informed the public that it would follow this procedure if it received a request for an opportunity to comment. (See 46 FR 41051 and 46 FR 44477.) For the same reason, USEPA finds it has good cause under 5 U.S.C. 553(b) to make this withdrawal immediately effective.

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

Dated: February 20, 1987.

Lee M. Thomas,
Administrator.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart YY—Wisconsin

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

§ 52.2570 [Amended]

2. Section 52.2570 is amended by removing and reserving paragraph (c)(44).

[FR Doc. 87-4274 Filed 3-2-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-30072C; FRL-364-2]

Increase in Tolerance Processing Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule increases fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The change in fees reflects a 3 percent increase in pay for civilian Federal General Schedule (GS) employees in 1987.

EFFECTIVE DATE: April 2, 1987.

FOR FURTHER INFORMATION CONTACT:

By mail:

Ken Wetzel, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: R. 1002-E, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1127).

SUPPLEMENTARY INFORMATION: The EPA (or the Agency) is charged with administration of section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA). Section 408 authorizes the Agency to establish tolerance levels and exemptions from the requirements for tolerance for raw agricultural commodities. Section 408(o) requires that the Agency collect fees as will, in the aggregate, be sufficient to cover the costs of processing petitions for pesticides products, i.e., that the tolerance process be as self-supporting as possible.

The current fee schedule for tolerance petitions (Section 180.33) was published in the Federal Register on January 8, 1986 (51 FR 844) and became effective on February 7, 1986. The regulation included a provision for automatic annual adjustments to the fees based on annual percentage changes in Federal salaries. The specific language in the regulation is contained in paragraph (o) of § 180.33 and reads as follows:

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale . . . When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the Federal Register as a final rule to become effective thirty days or more after publication, as specified in the rule.

The pay raise in 1987 for Federal General Schedule employees is 3 percent; therefore, the tolerance petition fees are being increased 3 percent. The entire fee schedule, § 180.33 is presented for the reader's convenience. (All fees have been rounded to the nearest \$25.00.)

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 22, 1987.

Lee M. Thomas,
Administrator.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a, 371.

2. Section 180.33 is revised to read as follows:

¹ USEPA published a general notice discussing the "Direct Final" procedure on September 4, 1981 (46 FR 44476).

§ 180.33 Fees.

(a) Each petition or request for the establishment of a new tolerance or a tolerance higher than already established, shall be accompanied by a fee of \$45,425, plus \$1,125 for each raw agricultural commodity more than nine on which the establishment of a tolerance is requested, except as provided in paragraphs (b), (d), and (h) of this section.

(b) Each petition or request for the establishment of a tolerance at a lower numerical level or levels than a tolerance already established for the same pesticide chemical, or for the establishment of a tolerance on additional raw agricultural commodities at the same numerical level as a tolerance already established for the same pesticide chemical, shall be accompanied by a fee of \$10,400 plus \$725 for each raw agricultural commodity on which a tolerance is requested.

(c) Each petition or request for an exemption from the requirement of a tolerance or repeal of an exemption shall be accompanied by a fee of \$8,350.

(d) Each petition or request for a temporary tolerance or a temporary exemption from the requirement of a tolerance shall be accompanied by a fee of \$18,125 except as provided in paragraph (e) of this section. A petition or request to renew or extend such temporary tolerance or temporary exemption shall be accompanied by a fee of \$2,575.

(e) A petition or request for a temporary tolerance for a pesticide chemical which has a tolerance for other uses at the same numerical level or a higher numerical level shall be accompanied by a fee of \$9,075 plus \$725 for each raw agricultural commodity on which the temporary tolerance is sought.

(f) Each petition or request for repeal of a tolerance shall be accompanied by a fee of \$5,875. Such fee is not required when, in connection with the change sought under this paragraph, a petition or request is filed for the establishment of new tolerances to take the place of those sought to be repealed and a fee is paid as required by paragraph (a) of this section.

(g) If a petition or a request is not accepted for processing because it is technically incomplete, the fee, less \$1,125 for handling and initial review, shall be returned. If a petition is withdrawn by the petitioner after initial processing, but before significant Agency scientific review has begun, the fee, less \$1,125 for handling and initial review, shall be returned. If an unacceptable or withdrawn petition is

resubmitted, it shall be accompanied by the fee that would be required if it were being submitted for the first time.

(h) Each petition or request for a crop group tolerance, regardless of the number of raw agricultural commodities involved, shall be accompanied by a fee equal to the fee required by the analogous category for a single tolerance that is not a crop group tolerance, i.e., paragraphs (a) through (f) of this section, without a charge for each commodity where that would otherwise apply.

(i) Objections under section 408(d)(5) of the Act shall be accompanied by a filing fee of \$2,275.

(j)(1) In the event of a referral of a petition or proposal under this section to an advisory committee, the costs shall be borne by the person who requests the referral of the data to the advisory committee.

(2) Costs of the advisory committee shall include compensation for experts as provided in § 180.11(c) and the expenses of the secretariat, including the costs of duplicating petitions and other related material referred to the committee.

(3) An advance deposit shall be made in the amount of \$22,650 to cover the costs of the advisory committee. Further advance deposits of \$22,650 each shall be made upon request of the Administrator when necessary to prevent arrears in the payment of such costs. Any deposits in excess of actual expenses will be refunded to the depositor.

(k) The person who files a petition for judicial review of an order under section 408(d)(5) or (e) of the Act shall pay the costs of preparing the record on which the order is based unless the person has no financial interest in the petition for judicial review.

(l) No fee under this section will be imposed on the Inter-Regional Research Project Number 4 (IR-4 Program).

(m) The Administrator may waive or refund part or all of any fee imposed by this section if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the person on whom the fee is imposed. A request for waiver or refund of a fee shall be submitted in writing to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (TS-767C), Washington, DC 20460. A fee of \$1,125 shall accompany every request for a waiver or refund, except that the fee under this sentence shall not be imposed on any person who has no financial

interest in any action requested by such person under paragraphs (a) through (k) of this section. The fee for requesting a waiver or refund shall be refunded if the request is granted.

(n) All deposits and fees required by the regulations in this part shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All deposits and fees shall be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. The payments should be specifically labeled "Tolerance Petition Fees" and should be accompanied only by a copy of the letter or petition requesting the tolerance. The actual letter or petition, along with supporting data, shall be forwarded to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division, Washington, DC 20460. A petition will not be accepted for processing until the required fees have been submitted. A petition for which a waiver of fees have been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on a petition.

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. In addition, processing costs and fees will periodically be reviewed and changes will be made to the schedule as necessary. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the Federal Register as a Final Rule to become effective 30 days or more after publication, as specified in the rule. When changes are made based on periodic reviews, the changes will be subject to public comment.

[FR Doc. 87-4373 Filed 3-2-87; 3:05 pm]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6746]

Suspension of Community Eligibility for Flood Insurance; Maine et al.

AGENCY: Federal Emergency
Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities will

be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed

in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date
Region I					
Maine	Greenville, town of, Piscataquis County.	230409C	July 17, 1975, Emerg. Mar. 4, 1987, Reg. Mar. 4, 1987, Susp.	Feb. 14, 1975, Feb. 4, 1977, Jan. 18, 1984 & Mar. 4, 1987.	Mar. 4, 1987.
Region II					
New York	Highland, town of, Sullivan County.	360822C	Aug. 30, 1974, Emerg. Mar. 23, 1984, Reg. Mar. 4, 1987, Susp.	June 21, 1974, July 16, 1976, Mar. 23, 1984 & Mar. 4, 1987.	Do.
Region III					
Virginia	Lee County, unincorporated areas.	510085B	Jan. 23, 1975, Emerg. Mar. 4, 1987, Reg. Mar. 4, 1987, Susp.	June 30, 1976 & Mar. 4, 1987	Do.
Region V					
Ohio	Scio, village of, Harrison County.	390261C	May 30, 1975, Emerg. Mar. 4, 1987, Reg. Mar. 4, 1987, Susp.	May 3, 1974, July 30, 1976, Mar. 6, 1982 & Mar. 4, 1987.	Do.
Do	Bowerston, village of, Harrison County.	390275B	Aug. 8, 1975, Emerg. Mar. 4, 1987, Reg. Mar. 4, 1987, Susp.	Aug. 19, 1974, May 28, 1976 & Mar. 4, 1987.	Do.
Region VI					
Texas	Double Oak, town of, Denton County.	481516C	May 28, 1982, Emerg. Mar. 4, 1987, Reg. Mar. 4, 1987, Susp.	June 19, 1979, June 22, 1982 & Mar. 4, 1987.	Do.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date ¹
Region VIII					
Colorado	Chaffee County, unincorporated area.	080269B	Apr. 11, 1975, Emerg. Mar. 4, 1987, Reg. Mar. 4, 1987, Susp.	June 3, 1977 & Mar. 4, 1987	Do.
Do	Larimer County, unincorporated areas.	080101C	July 2, 1974, Emerg. Mar. 4, 1987, Reg. Mar. 4, 1987, Susp.	Dec. 27, 1974, Apr. 2, 1979, Mar. 18, 1986 & Mar. 4, 1987.	Do.
North Dakota	Center, city of, Oliver County	380078B	Mar. 11, 1975, Emerg. Mar. 4, 1987, Reg. Mar. 4, 1987, Susp.	Apr. 12, 1974, Dec. 19, 1975 & Mar. 4, 1987.	Do.
Region IX					
Hawaii	Kauai County, unincorporated areas.	150002C	Apr. 2, 1971, Emerg. Nov. 4, 1981, Reg. Mar. 4, 1987, Susp.	Dec. 20, 1974, Dec. 20, 1977, Nov. 4, 1981 & Mar. 4, 1987.	Do.
Region X					
Oregon	Umatilla County, unincorporated areas.	410204B	Feb. 4, 1972, Emerg. June 15, 1978, Reg. Mar. 4, 1987, Susp.	June 15, 1978 & Mar. 4, 1987	Do.
Region V					
Minnesota	North Redwood, city of, Redwood County.	270392B	Nov. 5, 1975, Emerg. Jan. 2, 1987, Reg. Mar. 4, 1987, Susp.	Aug. 30, 1974, June 11, 1976 & Jan. 2, 1987.	Do.
Ohio	Uhrichsville, city of, Tuscarawas County.	390547	Mar. 5, 1975, Emerg. Jan. 2, 1987, Reg. Mar. 4, 1987, Susp.	Nov. 9, 1973, July 9, 1976, June 1, 1979 & Jan. 2, 1987.	Do.
Do	New Philadelphia, city of, Tuscarawas County.	390545	July 1, 1975, Emerg. Jan. 2, 1987, Reg. Mar. 4, 1987, Susp.	May 21, 1976, Apr. 23, 1982 & Jan. 2, 1987.	Do.
Do	New Comerstown, village of, Tuscarawas County.	390544C	Feb. 5, 1975, Emerg. Jan. 2, 1987, Reg. Mar. 4, 1987, Susp.	May 17, 1974, May 21, 1976, Oct. 27, 1978 & Jan. 2, 1987.	Do.
Do	Sharonville, city of, Hamilton County.	390236C	May 2, 1975, Emerg. Jan. 2, 1987, Reg. Mar. 4, 1987, Susp.	Apr. 12, 1974, May 28, 1976, July 27, 1979 & Jan. 2, 1987.	Do.
Wisconsin	Crandon, city of, Forest County	550143B	June 23, 1975, Emerg. Jan. 2, 1987, Reg. Mar. 4, 1987, Susp.	June 7, 1974, Oct. 17, 1975 & Jan. 2, 1987.	Do.
Do	Hixton, village of, Jackson County.	550187B	Jan. 29, 1975, Emerg. Jan. 2, 1987, Reg. Mar. 4, 1987, Susp.	May 17, 1974, Mar. 19, 1976 & Jan. 2, 1987.	Do.
Region II					
New York	Dear Park, town of, Orange County.	360612C	Apr. 4, 1975, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	May 17, 1974, May 28, 1976, Feb. 4, 1977 & Mar. 18, 1987.	Mar. 18, 1987.
Do	Hounsfield, town of, Jefferson County.	360340B	Aug. 22, 1975, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	Jan. 30, 1976 & Mar. 18, 1987	Do.
Do	Lenox, town of, Madison County.	360404C	Aug. 18, 1975, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	May 10, 1974, Sept. 24, 1976, June 9, 1978 & Mar. 18, 1987.	Do.
Do	Willsboro, town of, Essex County.	360267B	Oct. 15, 1976, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	Nov. 8, 1974, June 25, 1976 & Mar. 18, 1987.	Do.
Do	Woodbury, town of, Orange County.	360640B	Mar. 13, 1975, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	May 31, 1974, Jan. 2, 1976 & Mar. 18, 1987.	Do.
Region IV					
Georgia	Alma, city of, Bacon County	130202B	June 24, 1975, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	Jan. 28, 1974, Feb. 27, 1976 & Mar. 18, 1987.	Do.
Do	Cordele, city of, Crisp County	130214A	May 7, 1975, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	Sept. 24, 1976 & Mar. 18, 1987	Do.
Do	Effingham County, unincorporated areas.	130076B	Nov. 28, 1975, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	June 2, 1978 & Mar. 18, 1987	Do.
Do	Springfield, city of, Effingham County.	130427B	Jan. 16, 1976, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	Apr. 4, 1975, Sept. 8, 1978, Mar. 18, 1987.	Do.
Mississippi	Biloxi, city of, Harrison County	285252D	June 30, 1970, Emerg. Sept. 11, 1970, Reg. Mar. 18, 1987, Susp.	June 27, 1970, Sept. 11, 1970, July 1, 1974, Apr. 16, 1976, Aug. 8, 1980, Mar. 15, 1984 & Mar. 18, 1987.	Do.
Do	Ocean Springs, city of, Jackson County.	285259D	Aug. 14, 1970, Emerg. Sept. 18, 1970, Reg. Mar. 18, 1987, Susp.	Sept. 9, 1970, July 1, 1974, May 14, 1976, Mar. 1, 1984 & Mar. 18, 1987.	Do.
North Carolina	Pineville, town of, Mecklenburg County.	370160B	May 6, 1975, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	June 21, 1974, Jan. 7, 1977 & Mar. 18, 1987.	Do.
South Carolina	Greenwood County, unincorporated areas.	450094B	Apr. 21, 1978, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	Jan. 20, 1978 & Mar. 18, 1987	Do.
Tennessee	Covington, city of, Tipton County.	470189D	Jan. 15, 1975, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	Dec. 3, 1976 & Mar. 18, 1987	Do.
Region V					
Michigan	Manistee, city of, Manistee County.	260131B	Dec. 2, 1974, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	May 24, 1976, June 4, 1976 & Mar. 18, 1987.	Do.
Wisconsin	New Berlin, city of, Waukesha County.	550487C	May 18, 1973, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	June 21, 1974, Sept. 26, 1975, Dec. 12, 1975 & Mar. 18, 1987.	Do.
Region VI					
Oklahoma	Cache, town of, Comanche County.	400048B	Mar. 10, 1975, Emerg. Mar. 18, 1986, Reg. Mar. 18, 1986, Susp.	May 17, 1974, July 30, 1976 & Mar. 18, 1987.	Do.
Texas	Bedford, city of, Tarrant County	480585C	Jan. 19, 1973, Emerg. July 18, 1977, Reg. Mar. 18, 1987, Susp.	Dec. 28, 1973, July 18, 1977, Apr. 17, 1984 & Mar. 18, 1987.	Do.
Do	South Houston, city of, Harris County.	480311B	Apr. 17, 1975, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	June 28, 1974, Oct. 17, 1975, Mar. 18, 1987.	Do.
Do	Willow Park, city of, Parker County.	481164A	Nov. 11, 1977, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	Nov. 12, 1976 & Mar. 18, 1987	Do.
Region VII					
Kansas	Bel Aire, city of, Sedgwick County.	200964B	Feb. 15, 1985, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	Mar. 18, 1985 & Mar. 18, 1987	Do.
Do	Junction City, city of, Geary County.	200112C	Apr. 15, 1975, Emerg. Sept. 29, 1978, Reg. Mar. 18, 1987, Susp.	Feb. 1, 1974, Sept. 29, 1978 & Mar. 18, 1987.	Do.
Region IX					
California	Hanford, city of, Kings County	060088	June 16, 1975, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	June 7, 1974, July 11, 1975 & Mar. 18, 1987.	Do.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date ¹
Region X					
Oregon	Curry County, unincorporated areas.	410052C	Mar. 19, 1971, Emerg. Apr. 3, 1978, Reg. Mar. 18, 1987, Susp.	Sept. 13, 1974, Apr. 3, 1978 & Mar. 18, 1987.	Do.
Region I—Minimal Conversions					
Maine	Palermo, town of, Waldo County.	230263B	July 15, 1975, Emerg. Mar. 1, 1987, Reg. Mar. 1, 1987, Susp.	Apr. 1, 1977 & Mar. 1, 1987.	Mar. 1, 1987.
Do	Swans Island, town of, Hancock County.	230297	July 16, 1976, Emerg. Mar. 1, 1987, Reg. Mar. 1, 1987, Susp.	Feb. 14, 1975 & Mar. 1, 1987.	Do.
Do	Vinalhaven, town of, Knox County.	230230A	Apr. 18, 1975, Emerg. Mar. 1, 1987, Reg. Mar. 1, 1987, Susp.	Apr. 18, 1975 & Mar. 1, 1987.	Do.
Do	Eastbrook, town of, Hancock County.	230281A	June 14, 1976, Emerg. Mar. 1, 1987, Reg. Mar. 1, 1987, Susp.	Apr. 18, 1975 & Mar. 1, 1987.	Do.
Do	Brooklin, town of, Hancock County.	230275B	Mar. 8, 1985, Emerg. Mar. 1, 1987, Reg. Mar. 1, 1987, Susp.	Dec. 24, 1976 & Mar. 1, 1987.	Do.
Region II					
New York	Tupper Lake, village of, Franklin County.	360274B	May 29, 1975, Emerg. Mar. 1, 1987, Reg. Mar. 1, 1987, Susp.	May 19, 1974, June 25, 1976 & Mar. 1, 1987.	Do.
Region III					
Pennsylvania	Liberty, borough of, Tioga County.	420822B	Aug. 26, 1975, Emerg. Mar. 1, 1987, Reg. Mar. 1, 1987, Susp.	Sept. 13, 1974, June 11, 1976 & Mar. 1, 1987.	Do.
Do	Forksville, borough of, Sullivan County.	420811B	Apr. 21, 1975, Emerg. Mar. 1, 1987, Reg. Mar. 1, 1987, Susp.	Aug. 16, 1974, Jan. 2, 1976 & Mar. 1, 1987.	Do.
Do	Nicholson, borough of, Wyoming County.	420915B	Mar. 6, 1975, Emerg. Mar. 1, 1987, Reg. Mar. 1, 1987, Susp.	Jan. 17, 1975, June 4, 1976 & Mar. 1, 1987.	Do.
Do	Westfield, borough of, Tioga County.	422093B	Apr. 22, 1975, Emerg. Mar. 1, 1987, Reg. Mar. 1, 1987, Susp.	Sept. 20, 1984, May 28, 1976 & Mar. 1, 1987.	Do.
Region VIII					
South Dakota	Philip, city of, Haakon County.	460033B	June 18, 1975, Emerg. Mar. 1, 1987, Reg. Mar. 1, 1987, Susp.	June 7, 1974, Jan. 16, 1976 & Mar. 1, 1987.	Do.
Region I—Minimal Conversions					
Maine	Sidney, town of, Kennebec County.	230247B	May 10, 1976, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	Feb. 21, 1975, Dec. 3, 1976 & Mar. 18, 1987.	Mar. 18, 1987.
Do	Starks, town of, Somerset County.	230372A	Jan. 15, 1976, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	Apr. 18, 1975 & Mar. 18, 1987.	Do.
Do	Union, town of, Knox County.	230080B	July 3, 1975, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	Sept. 20, 1974, Sept. 10, 1976 & Mar. 18, 1987.	Do.
Region X					
Idaho	Homedale, city of, Owyhee County.	160107B	May 29, 1975, Emerg. Mar. 18, 1987, Reg. Mar. 18, 1987, Susp.	Feb. 1, 1974, Dec. 19, 1975 & Mar. 18, 1987.	Do.

¹ Date certain Federal assistance no longer available in special flood hazard areas.
Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Harold T. Duryee,
Administrator, Federal Insurance
Administration.
[FR Doc. 87-4364 Filed 3-2-87; 8:45 am]
BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

[Docket No. R-108]

Documentation, Transfer or Charter of Vessels; Reduction or Waiver of Fees

AGENCY: Maritime Administration,
Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule amends the regulation that imposes fees for processing applications for MARAD approval of the sale, transfer, or charter to noncitizens of vessels owned by U.S. citizens and documented vessels under U.S. law, or the transfer of such vessels to foreign registry. This amendment will allow MARAD to reduce any fee, or waive the fee entirely, in appropriate circumstances.

EFFECTIVE DATE: April 2, 1987.

FOR FURTHER INFORMATION CONTACT: Jessie C. Fernanders, Chief, Ship Disposal and Foreign Transfer, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590, Tel. (202) 366-5111.

SUPPLEMENTARY INFORMATION: Under section 9 of the Shipping Act, 1916, as amended (46 App. U.S.C. 809) [the "Act"], approval by the Secretary of Transportation is required for the sale or transfer in any manner to a noncitizen of any interest in a vessel owned in whole or in part by a U.S. citizen and documented (or last documented) under U.S. laws, or to transfer or place such a vessel under foreign registry. In addition, section 37 of the Act (46 App. U.S.C. 835) requires approval for such transactions during time of war or national emergency where the vessel is owned in whole or in part by a U.S. citizen or corporation or documented under U.S. laws. The application procedures and fee structure for obtaining approval were last revised in 1980. (45 FR 21635, Apr. 2, 1980, as amended at 47 FR 25530, June 14, 1982.) The procedures, under 46 CFR 221.14(a), require the payment of a fee, specified in

a schedule of fees, to accompany each application for approval for actions under section 9 or 37 of the Act. Subsection (d) of that regulation states that all fees required by the regulation "will be retained to recover the cost of processing the applications."

The Maritime Administration (MARAD) believes that there are occasions when a fee prescribed in the regulation might exceed MARAD's costs for processing the application or might be counterproductive to international relations. For example, if a U.S. citizen seeks approval for the sale of multiple U.S. vessels of virtually identical size and identical configuration to a noncitizen of transfer to foreign registry, that citizen must file an application for approval and pay the entire fee, per the schedule in 46 CFR 221.14(a), for each vessel listed on the application. Such a requirement may not accurately reflect the administrative cost per vessel to the government for processing the application(s). In order to allow MARAD flexibility in adjusting the fee charged to reflect more realistically the cost of processing these applications and to make the financial

impact on the applicant more equitable, MARAD is amending this regulation. It provides that MARAD, in appropriate circumstances, may reduce any fee to conform more closely with its administrative costs or waive the fee entirely, if it is not in the best interest of the Government to charge a fee.

E.O. 12291, Statutory and DOT Requirements

The Maritime Administrator has determined that this regulation is not a major rule as defined in E.O. 12291, and is not significant under DOT regulatory policies and procedures (49 FR 11034; February 26, 1979). This rule would affect ship owners that do not meet the criteria established for small business entities under existing SBA criteria (13 CFR 121.3). Therefore, the Maritime Administrator certifies that it will not exert a significant economic impact on a substantial number of small entities. The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rule merely enhances the flexibility of MARAD to impose more equitable fees for its services. It does not otherwise affect the existing approval process or requirements. Since this rule simply amends a minor element of the fee structure of an existing regulation, the Maritime Administrator finds good cause to make this regulation final without prior notice and opportunity for comment. 5 U.S.C. 553. This rule contains no new or expanded requirements for the collection of information, within the scope of the Paperwork Reduction Act of 1980. (44 U.S.C. Chapter 35). Existing requirements have been approved by the Office of Management and Budget under OMB Control No. 2133-0006.

List of Subjects in 46 CFR 221

Maritime carriers, Foreign registry, Documentation, Transfer, Charter.

PART 221—DOCUMENTATION, TRANSFER OR CHARTER OF VESSELS; REDUCTION OR WAIVER OF FEES

Accordingly, 46 CFR Part 221 is amended as follows:

PART 221—[AMENDED]

1. The authority citation for the entire Part 221 is revised to read as follows, and other citations of authority after individual sections are deleted.

Authority: Secs. 9, 37, 41 and 43, Shipping Act, 1916, as amended (46 App. U.S.C. 808, 835, 839, 841a.); 49 CFR 1.66.

2. A new paragraph (f) is added to § 221.14, to read as follows:

§ 221.14 Charges for processing certain applications.

(f) The Maritime Administration, in appropriate circumstances, and upon a written finding, may reduce any fee imposed by this section to conform the fee charged more closely with administrative costs or may waive the fee entirely if it is not in the best interest of the Government to charge the fee.

Dated: February 24, 1987.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 87-4306 Filed 3-2-87; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 86-27]

Attorney's Fees in Reparation Proceedings

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its Rules of Practice and Procedure to provide a standard and procedure for awarding attorney's fees in reparation proceedings. The rule establishes a method of computing reasonable attorney's fees and specific procedures of processing fee requests.

EFFECTIVE DATE: April 2, 1987.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoine, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: By notice of proposed rulemaking published in the Federal Register on October 27, 1986 (51 FR 37917) the Commission gave notice of its intent to establish a method of computing attorney's fees awards in reparation proceedings and specific procedures for processing fee requests. Specifically, the proposed rule deletes the previous provision in the Commission's Rules of Practice and Procedure governing attorney's fees award, Rule 253(b), 46 CFR 502.253(b), and adds a new Rule 254, 46 CFR 502.254. The new provision specifies that the so-called "lodestar" method of computing attorney's fees shall be utilized in cases under section 11 of the Shipping Act of 1984 (1984 Act), 46 U.S.C. app. 1710, wherein the complainant is awarded reparations. The rule also requires that petitions for fees be documented according to the reasonableness of the hours claimed

and the customary hourly rate for such services. Finally, the rule establishes time limits for filing attorney's fees petitions and replies, and specifies where they should be filed.

Comments in response to the Notice were filed by Crowley Maritime Corporation (CMC), Asia North America Eastbound Rate Agreement (ANERA), Transpacific Westbound Rate Agreement (TWRA) and the Maritime Administrative Bar Association (MABA). CMC supports the rule as proposed and urges its adoption. ANERA opposes the rule on the grounds that it is unnecessary and in excess of the Commission's statutory authority to the extent it purports to authorize awards of attorney's fees for court proceedings.

TWRA agrees with most provisions of the proposed rule but suggests further amendments to those provisions that specify the scope of the rule and the filing of petitions for fee awards. The suggested changes to the provisions concerning the scope of the rule would require that fees be awarded only for those portions of a proceeding directly related to a reparations award and would limit fee awards to no more than 50 percent of the reparations awarded. The suggested changes to the provision concerning the filing of a fee petition would provide for such filing after the time for appeal to a court had run or any appeal or subsequent Commission proceeding was terminated.

MABA suggests similar changes to the proposed rule to limit fee awards to only those services directly related to obtaining reparations, and in proportion to the amount of reparations awarded. Further, MABA urges that the "lodestar" hourly rate factor be stated as the rate customarily charged by the attorney actually prosecuting the complaint, or, alternatively, the average fee of a maritime attorney. MABA suggests that the time period allowed for filing a petition be tolled until after all appeals are finished. Finally, MABA argues that fees for non-attorneys and *pro se* litigants be limited to those services that an attorney would otherwise provide and exclude the complainant's time expended as a "client" in pursuit of a reparations award.

The Commission agrees with the argument that awards of attorney's fees should only be permitted for those services directly related to obtaining reparations. However, given the remedial purpose of the attorney's fees award statutory provision, no further restrictions or limits on awards appear justified.

We reject the notion that the hours claimed should be apportioned between the reparations award and other relief obtained. If 100 percent of an attorney's hours are directly related to a reparations award, but a cease and desist order is also issued, there is no justification to reduce the fees because the attorney was able to obtain such additional relief. Similarly, a cap on fees based upon a percentage of reparations awarded appears to be arbitrary and unsupported by the statute or its legislative history. If an attorney's fee claim is unreasonably disproportionate to the resulting reparations obtained, then the respondent may argue, as provided in paragraph (d) of the rule, that a mechanical "lodestar" calculation would yield an unreasonable attorney's fee award.

Conversely, an award of attorney's fees for the successful prosecution of court proceedings directly related to a reparations action is supported by general law and the legislative history of the Shipping Act of 1984. Generally, the calculation of "reasonable attorney's fees" may include hours expended on a separate proceeding, if that other proceeding is so closely related to the primary case as to be considered part of the primary litigation. See, *Webb v. Board of Education of Dyer County*, 85 L. Ed. 2d 233, 242 (1985). The filing of a complaint under section 11(a) is a statutory prerequisite to the filing of an injunctive action under section 11(h)(2) of the 1984 Act, and, if granted, the injunction may not exceed the complaint litigation by more than 10 days. Such linkage between the two statutory actions indicates that the injunctive action is intended to be an adjunct to the complaint proceeding to prevent further and irreparable injury to a complainant pending a final Commission decision on the merits of a complaint. Because these two proceedings are essentially part of the same "litigation," it is appropriate that section 11(g) attorney's fees, at a minimum, include hours expended in a successful injunctive action under section 11(h)(2).

This interpretation of section 11(g) is not inconsistent with the attorney's fees provision of section 11(h)(2). The latter states only that successful defendants in injunctive actions may be awarded fees by the court. It does not address the rights of successful plaintiffs. However, the legislative history of the 1984 Act indicates that the attorney's fees awarded under section 11(g) should include hours expended on a successful injunctive action under section 11(h)(2).

The Conference Report to the 1984 Act states:

In determining the amount of attorney's fees [in a reparation proceeding], a complainant's expenses for representation before the Commission as well as in any federal court proceeding (such as under subsection (h)) should be considered. But a successful complaint (sic) is not entitled to attorney's fees for any portion of the proceeding for which it did not prevail or for procedural motions that are unsuccessful.

* * * * *

A successful private complainant will recover attorney's fees for the injunctive proceeding if ultimately successful on the merits (subsection (g)). H.R. Rep. No. 600, 98th Cong., 2d Sess. 41 (1984) (emphasis added).

In the absence of incompatibility or inconsistency with an express provision, the statute should be construed to effect its Congressional intent. See, *First National Bank of Logan, Utah v. Walker Bank & Trust Co.*, 385 U.S. 252, 261 (1966). While the legislative history does not specify what other court actions in addition to injunctive suits fall under the attorney's fees provision of section 11(g), the "useful and necessary" *Webb* standard appears to be most appropriate.

The proposed rule does not need to be amended to account for any difference between "average" attorney's fees and "maritime" attorney's fees. The "lodestar" formula, based upon "customary" fees in the attorney's "community" is a flexible concept and may result in an hourly rate established on the basis of services rendered of a specialized nature, whether or not the particular attorney litigating a particular case is considered a "specialist" in the maritime law field. Similarly, "reasonableness of hours" will be construed to include only legal services and not other work normally required by the client in cases involving non-attorneys' and *pro se* litigants' fee claims.

Finally, the point is well taken that fees should not be awarded until any review process that may reverse a reparations award is completed. Accordingly, for purposes of the attorney's fee rule, a reparations award will not be final, and the time period for filing attorney's fees petitions will not begin to run, until such review period has expired. The proposed rule has been amended accordingly.

List of Subjects in 46 CFR Part 502

Administrative practice and procedure.

PART 502—[AMENDED]

Therefore, for the reasons set forth above and pursuant to 5 U.S.C. 553 and sections 11 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1710, 1716, Part 502 of Title 46, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 502 continues to read as follows:

Authority: 5 U.S.C. 552, 553, 559; 18 U.S.C. 207; secs. 18, 20, 22, 27 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817, 820, 821, 826, 841a); secs. 6, 8, 9, 10, 11, 12, 14, 15, 16 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1705, 1707-1711, 1713-1716); sec. 204(b) of the Merchant Marine Act, 1936 (46 U.S.C. app. 1114(b)); and E.O. 11222 of May 8, 1965 (30 FR 6469).

§ 502.253 [Amended]

2. Section 502.253 *Interest and attorney's fees in reparation proceedings*, is amended by removing "and attorney's fees" from the heading, by removing the paragraph designation from paragraph (a) and adding "[Rule 253.]" at the end thereof; and by removing paragraph (b).

3. A new § 502.254 is added reading as follows:

§ 502.254 Attorney's fees in reparation proceedings.

(a) *Scope*. Except for proceedings under Subpart S of this part, the Commission shall, upon petition, award the complainant reasonable attorney's fees directly related to obtaining a reparations award in any complaint proceeding under section 11 of the Shipping Act of 1984. For purposes of this section, "attorney's fees" includes the fair market value of the services of any person permitted to appear and practice before the Commission in accordance with Subpart B of this part, and may include compensation for services rendered the complainant in a related proceeding in federal court that is useful and necessary to the determination of a reparations award in the complaint proceeding.

(b) *Content of petitions*. Petitions for attorney's fees under this section shall specify the number of hours claimed by each person representing the complainant at each identifiable stage of the proceeding, and shall be supported by evidence of the reasonableness of hours claimed and the customary fees charged by attorneys and associated legal representative in the community where the petitioner practices. Requests for additional compensation must be supported by evidence that the customary fees for the hours reasonably expended on the case would result in an unreasonable fee award.

(c) *Filing of petition.* (1) Petitions for attorney's fees shall be filed within 30 days of a final reparation award:

(i) With the presiding officer where the presiding officer's decision awarding reparations became administratively final pursuant to § 502.227(a)(3) of this part; or

(ii) With the Commission, if exceptions were filed to, or the Commission reviewed, the presiding officer's reparation award decision pursuant to § 502.227 of this part.

(2) For purposes of this section, a reparation award shall be considered final after a decision disposing of the merits of a complaint is issued and the time for the filing of court appeals has run or after a court appeal has terminated.

(d) *Replies to petitions.* Within 20 days of filing of the petition, a reply to the petition may be filed by the respondent, addressing the reasonableness of any aspect of the petitioner's claim. A respondent may also suggest adjustments to the claim under the criteria stated in paragraph (b) of this section.

(e) *Ruling on petitions.* Upon consideration of a petition and any reply thereto, the Commission or the presiding officer shall issue an order stating the total amount of attorney's fees awarded. The order shall specify the hours and rate of compensation found awardable and shall explain the basis for any additional adjustments. An award order shall be served within 60 days of the date of the filing of the reply to the petition or expiration of the reply period; except that in cases involving a substantial dispute of facts critical to the award determination, the Commission or presiding officer may hold a hearing on such issues and extend the time for issuing a fee award order by an additional 30 days. The Commission or the presiding officer may adopt a stipulated settlement of attorney's fees.

(f) *Appeals.* In cases where the presiding officer issues an award order, an appeal of that order may be made to the Commission under the same criteria and procedures as set forth in paragraphs (b), (c) and (d) of this section. The Commission may award additional attorney's fees to a complainant that substantially prevails in such an appeal proceeding. [Rule 254.]

4. Section 502.318 is amended by designating the present text as paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 502.318 Decision

* * * * *

(b) If the complainant is awarded reparations pursuant to section 11 of the Shipping Act of 1984, attorney's fees shall also be awarded in accordance with § 502.254 of this part. [Rule 318.]

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-4395 Filed 3-2-87; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Part 5316

Federal Acquisition Regulation Supplement; Types of Contracts

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: DOD FAR Supplement Subpart 216.2, Fixed-Price Contracts, is being supplemented by the Air Force to require that economic price adjustment (EPA) clauses (abnormal cost index type) be structured in such a way that contract adjustments for fluctuations in the economy will include adjustments for future periods as well as completed periods.

EFFECTIVE DATE: June 1, 1987.

FOR FURTHER INFORMATION CONTACT: Capt Jeff Parsons, HQ USAF/RDCP, Room 4C251, Pentagon, Washington, DC 20330-5040, telephone (202) 697-6522.

SUPPLEMENTARY INFORMATION:

A. Background

The FY 1986 Department of Defense Appropriation Act deleted \$375M from the Air Force budget request for various aircraft programs due to a Congressional Budget Office (CBO) report that indicated these funds were in excess due to declining inflation rates. The House Appropriations Committee (HAC) stated in their appropriation report that "The Committee has no intention of appropriating funds for inflation well above rational need, simply so the Department can declare funds to be excess at its convenience or to accelerate procurement of equipment that is not needed until later years." The Committee also said that the 1987 budget submitted by the Air Force must reflect the budgeted inflation and how that compares to the contract inflation on weapon systems which use EPA clauses in their contracts.

A change in the current EPA policy will allow the identification of future contract savings earlier and provide

better fiscal management. This change will require priced options, contract obligations, and contract funding requirements to be provisionally adjusted for future periods when EPA price adjustments for completed periods are made. Current policy is to only make adjustments to completed periods when actuals are available. However, since projected inflation indices have a compounding effect in determining forecasted prices, future prices should also be adjusted to reflect actual economic trends.

This change will allow the Air Force to reduce contract funding earlier during periods of declining inflation, and will allow early identification of additional funds required during periods of increasing inflation. Identifying and removing funds strictly through the budget estimating process is not possible without changing the actual contract prices. Programs would still have to fund their contract liability if prices were not changed.

B. Public Comments

On September 9, 1986, a notice of the proposed rule was published in the *Federal Register* (51 FR 32114) requesting interested parties to submit comments to be considered in the formulation of the final rule. As a result of the notice, one comment was received and considered.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, this rule does not have a significant impact on a substantial number of small entities because the rule applies to contracts exceeding \$50,000,000.

D. Paperwork Reduction Act

This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 5316

Government procurement.

Therefore, Title 48 of the Code of Federal Regulations is amended by adding Part 5316 to read as follows:

PART 5316—TYPES OF CONTRACTS

Authority: 5 U.S.C. 301 and FAR 1.301.

Subpart 5316.2—Fixed-Price Contracts

5316.203-4 Contract clauses.

(d) Adjustments based on cost indexes of labor or material.

(3)(iii)(A) When using the abnormal escalation index method, on contracts in excess of \$50,000,000, the clause shall

provide that contract adjustments will include the compounding effect of actual indices for future periods. Since predicted economic trends have a compounding effect on the scheduled price, when calculating each economic price adjustment (EPA) for costs within a completed period, a further provisional adjustment shall be made to all future period costs. This provisional adjustment shall be calculated using the same percentage decrease (or increase) as was made in the adjustment for the completed period. Provisional adjustments for each period must be liquidated against the final adjustment for each period. For example, the following formula could be used in computing adjustments:

$$\text{Adjustment} = ((x - y) / y) [z] - s$$

where

x = actual index

y = projected index

z = sum of dollars subject to adjustment for all periods in which a final adjustment has not been made

s = sum of unliquidated provisional adjustments

(B) For those EPA clauses which include a dead band in which no adjustment is made, the upper end of the dead band becomes the projected index value during the times of increasing inflation, and the lower end of the dead band becomes the projected index value during times of decreasing inflation. For those EPA clauses which provide for price adjustments only if the difference

between the projected index value exceeds a predetermined threshold (trigger bands), no adjustment will be made for the future periods unless the actual index value exceeds the predetermined threshold. However, when the actual index exceeds the projected index by the predetermined threshold, then an adjustment must be made to future periods.

(C) The above requirement is optional on multinational contracts where the impact of multiple country index recalculations are extremely complex.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-4338 Filed 3-2-87; 8-45 am]

BILLING CODE 3910-01-M

Proposed Rules

Federal Register

Vol. 52, No. 41

Tuesday, March 3, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Emergency Core Cooling Systems; Revisions to Acceptance Criteria

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing an amendment that would allow the use of alternative methods to demonstrate that the emergency core cooling system (ECCS) would protect the nuclear reactor core during a postulated design basis loss-of-coolant accident (LOCA). The amendment is proposed because research, performed since the current rule was written, has shown that calculations performed using current methods and in accordance with the current requirements result in estimates of cooling system performance that are significantly more conservative than estimates based on the improved knowledge gained from this research. In addition, the operation of some nuclear reactors is being unnecessarily restricted by the rule, resulting in increased costs of electricity generation. The proposed rule, while continuing to allow the use of current methods and requirements, would also allow the use of more recent information and knowledge to demonstrate that the ECCS would protect the reactor during a LOCA. The proposed amendment, which would apply to all applicants for and holders of construction permits or operating licenses for light water reactors, would also relax requirements for certain reanalyses which do not contribute to safety.

DATES: Comment period expires July 1, 1987. Comments received after that date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before that date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention Docketing and Service Branch. Hand deliver comments to Room 1121, 1717 H Street NW., Washington, DC between 8:15 a.m. and 5:00 p.m. Examine comments received, the environmental assessment and finding of no significant impact, and the regulatory analysis at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC. Obtain single copies of the environmental assessment and finding of no significant impact and the regulatory analysis from L.M. Shotkin, Office of Nuclear Regulatory Research, Washington, DC 20555, telephone (301) 443-7825.

FOR FURTHER INFORMATION CONTACT: L.M. Shotkin, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443-7825.

SUPPLEMENTARY INFORMATION:

Background

Section 50.46 of 10 CFR Part 50 provides "Acceptance Criteria for Emergency Core Cooling Systems (ECCS) in Light Water Nuclear Power Reactors." This section requires that calculations of loss-of-coolant accidents (LOCA) be performed to show that the ECCS will maintain cladding temperatures, cladding oxidation and hydrogen generation to within certain specified limits. It also requires that a coolable core geometry be maintained and that long term decay heat removal be provided. Appendix K to 10 CFR Part 50 sets forth certain required and acceptable features of the models used to perform these calculations. The criteria of 10 CFR 50.46 and the calculational methods specified in Appendix K were formally issued in January 1974 after extensive rulemaking hearings and are based on the understanding of ECCS performance available at that time.

In the thirteen years following the rulemaking, the NRC, the Department of Energy (including the Atomic Energy Commission and the Energy Research and Development Agency), U.S. nuclear industry and foreign researchers have obtained considerable information on ECCS performance. The majority of this LOCA research is complete and has greatly improved of understanding of

ECCS performance during a LOCA. The methods specified in Appendix K, combined with other analysis methods currently in use, are now known to be highly conservative; that is, the actual temperatures during a LOCA would be much less than the temperatures calculated using Appendix K methods. The ECCS research has gone beyond confirming that Appendix K is conservative; it has allowed quantification of that conservatism. The results of experiments, computer code development, and code assessment now allow more realistic calculations of ECCS performance during a LOCA, along with reasonable estimates of uncertainty, than is possible using current evaluation models.

It is also known that some plants are now restricted in operating flexibility by limits resulting from conservative calculations using current models and Appendix K requirements. These restrictions may be preventing optimal operation of these plants. Based on research performed, it is now known that these restrictions can be relaxed because of improved knowledge of safety margins.

On December 6, 1978, the NRC published an advance notice of proposed rulemaking (43 FR 57157) calling for a two-phase approach to the revision of 10 CFR Part 50 and Appendix K. The first step would have been to make procedural changes and to permit minor technical changes which would not have reduced the conservatism contained in Appendix K. The second phase would have made further technical changes based on research results and operating experience.

NRC activity on the ECCS rulemaking was severely curtailed as a result of the high priority efforts required by the TMI-2 accident. This rulemaking was dormant until July 1981 when it was revived in the context of simplifying and streamlining the regulatory process.

The NRC has reviewed the comments made by outside organizations on the advance notice of proposed rulemaking as well as a number of other comments received since that time. In general, the commenters support a rule change that would permit greater flexibility in meeting the regulations and would incorporate the use of presently available research information. Many felt that the Phase 1 scope should be expanded to allow the use of additional

information available from completed ECCS research.

Because of the delay in changing the ECCS rule, the NRC has used an interim approach, described in SECY-83-472,¹ to accommodate requests for improved evaluation models, submitted by reactor vendors, for the purpose of reducing reactor operating restrictions. This interim approach requires a realistic calculation, with an evaluation of the uncertainty in the calculation, to demonstrate that the improved evaluation model maintains an adequate conservatism of safety factor.

The NRC has decided to proceed with the rulemaking, but in the form of a more comprehensive amendment based on (1) the comments received since the publication of the 1978 notice of proposed rulemaking, (2) the additional research conducted and experience gained since the 1978 notice, and (3) recent experience applying the methods of SECY-83-472.

A report, "Compendium of ECCS Research for Realistic LOCA Analysis," NUREG 1230 is being prepared. It summarizes the extensive ECCS research that has been conducted. A draft version of this report will be available at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555, 30 days following publication of this proposed rule in the Federal Register.

Summary of Proposed Rule Changes

Section 50.46 Acceptance Criteria for Emergency Core Cooling Systems for Light Water Reactors

Section 50.46(a)(1) would be amended and redesignated § 50.46(a)(1)(i) to delete the requirement that the features of Section I of Appendix K to 10 CFR Part 50 be used to develop the evaluation model. This section would require that an acceptable evaluation model have sufficient supporting justification to show that the analytical technique realistically describes the behavior of the reactor system during a LOCA. The staff expects that the analytical technique will, to the extent practicable, utilize realistic methods and be based upon applicable experimental data. The amended rule would also require that the uncertainty of the calculation be estimated and accounted for when comparing the results of the calculation to the temperature limits and other criteria of § 50.46(b) so that there is a high probability that the criteria

would not be exceeded. The staff expects the realistic evaluation model to retain a degree of conservatism consistent with the uncertainty of the calculation. The proposed rule would not specifically prescribe the analytical methods or uncertainty evaluation techniques to be used. However, guidance would be provided in the form of a Regulatory Guide.² It should be noted, as discussed in SECY-83-472, that the NRC has, in the past, found acceptable a method for estimating the uncertainty that was judged to be at least at the 95% probability level. This probability level of 95% is considered by the staff to meet the high level of probability required by the rule. It is also recognized that the probability cannot be determined using totally rigorous mathematical methods due to the complexity of the calculations. However, the staff expects that any simplifying assumptions will be stated so that the staff may evaluate them to ensure that they are reasonable. Appendix K, Section II, "Required Documentation," would remain generally applicable, with only minor revisions made to be consistent with the amended rule.

A new § 50.46(a)(1)(ii) would be added to allow the features of Section I of Appendix K to be used in evaluation models as an alternative to performing the uncertainty evaluation specified in the amended § 50.46(a)(1)(i). This method would remain acceptable because Appendix K is conservative with respect to the realistic method proposed in the amended § 50.46(a)(1)(i). This would allow both current and future applicants and licensees to use existing evaluation models if they did not need or desire relief from current operating restrictions.

In § 50.46 paragraphs (a)(2) and (3) would be totally revised to eliminate portions of those paragraphs concerned with historical implementation of the current rule. These provisions would be replaced as described in the following paragraphs.

Section 50.46(a)(2) would be revised to indicate that restrictions on reactor operation may be imposed by the Director of Nuclear Reactor Regulation if the ECCS cooling performance evaluations are not consistent with the

requirements of §§ 50.46(a)(1)(i) and (ii). Because of this revision, the last sentence of the existing § 50.46(a)(1) has been deleted in the redesignated § 50.46(a)(1)(i).

The current rule contains no explicit requirements concerning reporting and reanalysis when errors in evaluation models are discovered or changes are made to evaluation models. However, current practice has required reporting of errors and changes. The proposed rule would explicitly set forth requirements to be followed in the event of errors or changes. The definition of a significant change is currently taken from Appendix K, Section II.1.b which defines a significant change as one which changes calculated cladding temperature by more than 20° F. The revised § 50.46(a)(3) would state specific requirements for reporting and reanalyses when errors in evaluation models are discovered or changes are made to evaluation models. It would require that all changes or errors in approved evaluation models be reported at least annually and would not require any further action by the licensee until the error is reported. Thereafter, although reanalysis is not required solely because of such minor error, any subsequent calculated evaluation of ECCS performance requires use of a model with such error, and any prior errors, corrected. The staff needs to be apprised of even minor errors or changes in order to ensure that they agree with the applicant's or licensee's assessment of the significance of the error or change and to maintain a general knowledge of modifications made since staff review of the evaluation model. However, past experience has shown that many errors or changes to evaluation models are very minor and the burden of immediate reporting cannot be justified for such minor errors because they do not affect the immediate safety or operation of the plant. The staff has therefore proposed periodic reporting to satisfy the need to be apprised of changes or errors without providing undue burden on the applicant or licensee. Such report is to be filed within one year of discovery of the error and shall be reported each year thereafter until a revised evaluation model or a revised evaluation correcting such errors is approved by the NRC staff.

Significant errors may require more timely attention since they may be important to the safe operation of the plant. The proposed rule revision would define a significant error or change as one which results in a calculated peak fuel cladding temperature different by

² Draft Regulatory Guide, "Best Estimate Calculations of Emergency Core Cooling Systems Performance," will be issued to all licensees and will be available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington DC, 30 days following publication of this proposed rule in the Federal Register. Requests for single copies of the draft guide, which may be reproduced, should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control.

¹ SECY-83-472, "Emergency Core Cooling System Analysis Methods," November 13, 1983, is available for inspection and copying for a fee at the Commission's Public Document Room at 1717 H Street NW., Washington, DC.

more than 50° F, or an accumulation of errors and changes such that the sum of the absolute magnitude of the temperature changes is greater than 50° F. More timely reporting (30 days) would be required for such errors or changes. This definition of a significant change is based on staff judgement concerning the importance of errors and changes typically reported to the staff in the past. The proposed rule revision would also allow the staff to determine the schedule for reanalysis based on the importance to safety relative to other applicant or licensee requirements. Errors or changes that would result in the calculated plant performance exceeding any of the criteria of § 50.46(b) would mean that the plant is not operating within the requirements of the regulations and would require immediate reporting as required by § 50.55(e), § 50.72 and § 50.73 and immediate steps to bring the plant into compliance with § 50.46.

Appendix K ECCS Evaluation Models. Amendments would be made to Appendix K, Section I.C.5.b, to modify post-CHF heat transfer correlations listed as acceptable. The "McDonough" reference would be replaced with a later paper which is more generally available and which includes additional data.

The heat transfer correlation of Dougall and Rohsenow, listed as an acceptable heat transfer correlation in Appendix K, paragraph I.C.5.b, would be removed under the proposed rule revision. Research performed since Appendix K was written has shown that this correlation overpredicts heat transfer coefficients under certain conditions and therefore can produce nonconservative results. Since the Dougall-Rohsenow correlation is now known to be nonconservative under certain conditions, it is appropriate to no longer reference it as a generally acceptable correlation. A number of applicants and licensees currently use the Dougall-Rohsenow correlation in approved evaluation models. Because of this, the staff has considered how this change should be implemented. There is no justification on grounds of safety for requiring that applicants and licensees making use of Dougall-Rohsenow revise their evaluation models at this time. This is appropriate (even though part of the approved evaluation model, Dougall-Rohsenow, is now known to be nonconservative) because the existing evaluation models are known to contain a large degree of overall conservatism even while using the Dougall-Rohsenow correlation. This large overall conservatism has been demonstrated through comparisons between evaluation model calculations and

calculations using NRC's best estimate computer codes. The cost of revising the evaluation models would be high with no real benefit to safety. Thus requiring that the applicants and licensees remove the Dougall-Rohsenow correlation from their evaluation models could not be justified on a cost-benefit basis.

A new Section I.C.5.c would be added to Appendix K to state the Commission's requirements regarding continued use of the Dougall-Rohsenow correlation in existing evaluation models. Evaluation models which make use of the Dougall-Rohsenow correlation and have been approved prior to the effective date of this proposed rule revision may continue to use this correlation as long as no changes are made to the evaluation model which significantly reduce the current overall conservatism of the evaluation model. If the applicant or licensee submits proposed changes to an approved evaluation model, or submits corrections to errors in the evaluation model which significantly reduce the existing overall conservatism of the model, continued use of the Dougall-Rohsenow correlation under conditions where nonconservative heat transfer coefficients result would no longer be acceptable. For this purpose, a significant reduction in overall conservatism has been defined as a "net" reduction in calculated peak clad temperature of at least 50° F from that which would have been calculated using existing evaluation models. A reduction in calculated peak clad temperature could potentially result in an increase in the actual allowed peak power in the plant. An increase in allowed plant peak power with a known nonconservatism in the analysis would be unacceptable. This definition of a significant reduction in overall conservatism is based on staff judgement regarding the size of the existing overall conservatism in evaluation model calculations relative to the conservatism required to account for overall uncertainties in the calculations.

Appendix K, Section II.1.b, would be removed since this requirement would be clarified under the amended § 50.46(a)(3). Likewise, Appendix K, Section II.5, would be amended to account for the fact that not all evaluation models will be required to use the features of Appendix K, Section I. These minor changes to Appendix K will not affect any existing approved evaluation models since the changes are either "housekeeping" in nature or are changes to "acceptable features," not "required features."

With respect to the proposed rule changes identified in this summary, the Advisory Committee on Reactor

Safeguards requests the public's comments on whether the existing rule should be "grandfathered" indefinitely. That is:

1. Should the conservative ECCS evaluation method of Appendix K be permitted indefinitely or should this aspect of the ECCS rule be phased out after some period of time?

Further, Commissioner Asselstine requests the public's comments on the following:

2. Should this rule change include an explicit degree of conservatism that must be applied to the evaluation models?

3. This rule change would allow a 5 to 10 percent increase in the fission product inventory that could be released from any core meltdown scenario. Should this rule change explicitly prohibit any increase in approved power levels until all severe accident issues and unresolved safety issues are resolved?

4. Should the technical basis for this proposed rule change be reviewed by an independent group such as the American Physical Society?

Finding Of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The primary effect of the rule would be to allow an increase in the peak local power in the reactor. This could be used to either tailor the power shape within the reactor or increase the total power. Changing the power shape without changing the total power would have a negligible effect on the environmental impact. The total power could also be increased, but would be expected to be increased by no more than about 5% to 10% due to hardware limitations in existing plants. This 5% to 10% power increase is not expected to cause difficulty in meeting the existing environmental limits. The only change in non-radiological waste would be an increase in waste heat rejection commensurate with any increase in power. For stations operating with an open (once through) cooling system, this additional heat would be directed to a surface water body. Discharge of this heat is regulated under the Clean Water Act administered by the U.S. Environmental Protection Agency (EPA) or designated state agencies. It is not

intended that NRC approval of increased power level affect in any way the responsibility of the licensee to comply with the requirements of the Clean Water Act. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from L.M. Shotkin, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC, 20555, telephone (301) 443-7825.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis for this proposed regulation. The analysis examines the cost and benefits of the alternatives considered by the Commission. The draft regulatory analysis is available for inspection and copying for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from L.M. Shotkin, Office of Nuclear Regulatory Research, Washington, DC 20555, telephone (301) 443-7825.

The Commission requests public comment on the draft analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR Part 121. Since these companies are dominant in their service areas, this proposed rule does

not fall within the purview of the Act.

Backfit Analysis

Although a backfit analysis is not required by 10 CFR 50.109 because the proposed rule does not require applicants or licensees to make a change but only offers additional options, the factors in 10 CFR 50.109(c) have been analyzed as indicated below. More detailed information relevant to this backfit analysis may be found in the regulatory analysis referenced above.

1. Statement of the specific objectives that the proposed backfit is designed to achieve

The objective of the proposed rule is to modify 10 CFR 50.46 and Appendix K to permit the use of realistic ECCS evaluation models. More realistic estimates of ECCS performance, based on the improved knowledge gained from recent research on ECCS performance, would remove unnecessary operating restrictions.

2. General description of the activity that would be required by the licensee or applicant in order to complete the backfit

The proposed amendment would allow alternative methods to be used to demonstrate that the ECCS would protect the nuclear reactor core during a postulated design basis loss-of-coolant accident (LOCA). While continuing to allow the use of current Appendix K methods and requirements, the proposed rule would also allow the use of more recent information and knowledge currently available to demonstrate that the ECCS would perform its safety function during a LOCA. If an applicant or licensee elected to use a new realistic model they would have to provide sufficient supporting justification to validate the model and include comparisons to experimental data and estimates of uncertainty. In accounting for the uncertainty, the analysis would have to show, with a high level of probability, that the ECCS performance criteria are not exceeded.

3. Potential change in risk to the public from the accidental offsite release of radioactive materials

The proposed rule could result in increased local power within the reactor core and possibly increases in total power. Power increases on the order of 5-10% will have an insignificant effect on risk. One effect of increased power would be to increase the fission product inventory. A five percent power increase would result in a five percent increase in fission products. Thus, five percent more

fission products could be released during core melt scenarios and potentially released to the environment during severe accidents.

The proposed rule would still require that fuel rod peak cladding temperature (PCT) remain below 2200°F. Because research indicates that significant fuel damage will not occur until 2800°F, a 400°F safety margin will remain. However, reactors choosing to increase power by five to ten percent would be operating with less margin between the PCT and the 2200°F limit than previously. The increased risk represented by this decrease in margin and increase in fission product inventory is negligible and falls within the uncertainties of PRA risk estimates. In addition, other safety limits, such as departure from nucleate boiling (DNB), and operational limits, such as turbine design, would limit the amount of margin reduction permitted under the revised rule. The proposed rule could also potentially reduce the risk from pressurized thermal shock by allowing the reactor to be operated in a manner which reduces the neutron fluence to the vessel.

4. Potential impact on radiological exposure to facility employees

Since the primary effect of the proposed rule involves the calculational methods to be used in determining the ECC cooling performance, it is expected that there will be an insignificant impact on the radiological exposure to facility employees. Because of the reduced LOCA restrictions resulting from the new calculations it is possible for the plant to achieve more efficient operation and improved fuel utilization with improved maneuvering capabilities. As a result, it is conceivable that there could be a reduction in radiological exposure if the fuel reloads can be reduced. This effect is not expected to be very significant.

5. Installation and continuing costs associated with the backfit, including the cost of facility down times or the cost of construction delay

LOCA considerations resulting from the present rule are restricting the optimum production of nuclear electric power in some plants. These restrictions can be placed into the following three categories:

- (1) Maximum plant operating power.
- (2) Operational flexibility and operational efficiency of the plant, and
- (3) Availability of manpower to work on other activities.

The effect of the proposed rule will vary from plant to plant. Some plants may realize savings of several million dollars per year in fuel and operating costs. Significantly greater economic benefit would be realized by plants able to increase total power as a result of the proposed rule. The regulatory analysis cited above indicates that the total present value of the energy replacement cost savings for a five percent power upgrade would vary between 10 and 150 million dollars depending on the plant. Additional information concerning these potential cost savings are included in the regulatory analysis.

6. The potential safety impact of changes in plant or operational complexity including the effect on other proposed and existing regulatory requirements

There are safety benefits derivable from alternative fuel management schemes that could be utilized if the proposed changes were implemented. The higher power peaking factors that would be allowed with the revised rule could provide greater flexibility for fuel designers when attempting to reduce neutron flux at the vessel. This can result in a corresponding reduction in risk from pressurized thermal shock.

The reduced cladding temperatures that would be calculated under the proposed rule offers the possibility of other design and operational changes that could result from the lower calculated temperatures. ECCS equipment numbers, sizes or surveillance requirements might be reduced and still meet the ECCS design criteria (if not required to meet other licensing requirements). Another option may be to increase the diesel/generator start time duration.

In summary, the effect of the proposed rule on safety would have both potential positive and negative aspects. The potential for reduction of ECC systems in existing or new plants is present. However, several positive aspects may also be realized under the proposed rule. While the net effect on safety would be plant specific, the effect is believed to be small.

7. The estimated resource burden on the NRC associated with the proposed backfit; and the availability of such resources

The major staff resources required under the proposed rule change would be to review the realistic models and uncertainty analysis required by the revised ECCS Rule. Based on previous experience with the General Electric Co. SAFER model and the learning that has resulted from these efforts, it is

estimated that approximately one staff year would be required to review each generic model submitted. There are four major reactor vendors (GE already has a revised evaluation model approved under the existing Appendix K for jet pump plants but is currently working on a new evaluation model for non-jet pump plants and may update their methodology under a new rule) and several fuel suppliers and utilities which perform their own analyses and potentially might submit generic models for review. However, it is expected that only 3 or 4 generic models would be submitted since not all plants would benefit from the rule change. Thus, about 3-4 staff years would be required to review the expected generic models. Once a generic model is approved, the plant specific review is very short. In addition, several vendors are currently planning to submit realistic models in conjunction with the use of SECY-83-472. Therefore, staff resources would be expended to review these models in any event. Since these models would not change as a result of the revised ECCS rule, there should be no net increase in resources required over that already planned to be expended. In summary, while it is difficult to accurately estimate, it is expected that the proposed rule change will have a small overall impact on NRC resources.

8. The potential impact of differences in facility type, design or age on the relevancy and practicality of the proposed backfit

The degree to which the proposed rule would affect a particular plant depends on how limited the plant is by the LOCA restrictions. The Babcock and Wilcox (B&W) and Combustion Engineering (CE) companies have informally indicated that they do not feel that the plants which they design are limited by LOCA and, therefore, B&W and CE plants would not be affected. General Electric Co. (GE) plants do tend to be limited in operation by LOCA restrictions and would benefit from relief from LOCA restrictions. However, this relief is already available for most GE plants through the recently approved SAFER evaluation model. Any additional relief due to a rule change would be of little further benefit. Westinghouse (W) plants would appear to directly benefit from relaxation of LOCA limits. W plants represent the largest number of plants being constructed. W indicates that most of these plants are limited by LOCA considerations.

9. Whether the proposed backfit is interim or final and if interim, the justification for imposing the proposed backfit on an interim basis

The proposed rule, when made effective, would be done so in final form and not on an interim basis. It would continue to permit the performance of ECCS cooling calculations using either realistic models or models in accord with Appendix K.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and Recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, 50.56 also issued under sec. 185, 68 Stat. 955 (45 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4322). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073, (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 50.10(b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and

§§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 1610, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§§ 50.2, 50.10, 50.21, 50.22, 50.23, 50.30, 50.33, 50.33a, 50.34, 50.35, 50.37, 50.38, 50.41, 50.42, 50.43, 50.44, 50.47, 50.53, 50.54, 50.55, 50.55a, 50.56, 50.70, 50.80, 50.103, and Appendices A, E, F, L, and Q [Amended]

2. The authority citations following §§ 50.2, 50.10, 50.21, 50.22, 50.23, 50.30, 50.33, 50.33a, 50.34, 50.35, 50.37, 50.38, 50.41, 50.42, 50.43, 50.44, 50.47, 50.53, 50.54, 50.55, 50.55a, 50.56, 50.70, 50.80, 50.103, and Appendices A, E, F, L, and Q are removed.

3. In § 50.46, paragraph(a) is revised to read as follows:

§ 50.46 Acceptance criteria for emergency core cooling systems for light water nuclear power reactors.

(a)(1)(i) Each boiling and pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical Zircaloy cladding shall be provided with an emergency core cooling system (ECCS) which shall be designed such that its calculated cooling performance following postulated loss-of-coolant accidents conforms to the criteria set forth in paragraph (b) of this section. ECCS cooling performance shall be calculated in accordance with an acceptable evaluation model and shall be calculated for a number of postulated loss-of-coolant accidents of different sizes, locations, and other properties sufficient to provide assurance that the most severe postulated loss-of-coolant accidents are calculated. Except as provided in paragraph (a)(1)(ii) of this section, the evaluation model shall include sufficient supporting justification to show that the analytical technique realistically describes the behavior of the reactor system during a loss-of-coolant accident. Comparisons to applicable experimental data shall be made and uncertainties in the analysis method and inputs shall be identified and assessed so that the uncertainty in the calculated results can be estimated. This uncertainty shall be accounted for so that, when the calculated ECCS cooling performance is compared to the criteria set forth in paragraph (b) of this section, there is a high level of probability that the criteria would not be exceeded. Appendix K, Part II, Required Documentation, sets forth the documentation requirements for each evaluation model.

(ii) Alternatively, an ECCS evaluation model may be developed in conformance with the required and acceptable features of Appendix K, ECCS Evaluation Models.

(2) Restrictions on reactor operation may be imposed by the Director of Nuclear Reactor Regulation if it is found that the evaluations of ECCS cooling performance submitted are not consistent with paragraphs (a)(1)(i) and (ii) of this section.

(3)(i) Each applicant for or holder of an operating license or construction permit shall estimate the effect of any change to or error in an acceptable evaluation model or in the application of such a model to determine if the change or error is significant. For this purpose, a significant change or error is one which results in a calculated peak fuel cladding temperature different by more than 50°F from the temperature calculated for the limiting transient using the last acceptable model, or is a cumulation of changes and errors such that the sum of the absolute magnitudes of the respective temperature changes is greater than 50°F.

(ii) For each change to or error discovered in an acceptable evaluation model or in the application of such a model which affects the temperature calculation, the applicant or licensee shall report the nature of the change or error and its estimated effect on the limiting ECCS analysis to the Commission at least annually as specified in § 50.4. If the change or error is significant, the applicant or licensee shall provide this report within 30 days and include with the report a proposed schedule for providing a reanalysis or taking such other action as may be needed to show compliance with § 50.46 requirements. This schedule may be developed using an integrated scheduling system previously approved for the facility by the NRC. For those facilities not using an NRC approved integrated scheduling system, a schedule will be established by the NRC staff within 60 days of receipt of the proposed schedule. Any change or error correction that results in a calculated ECCS performance that does not conform to the criteria set forth in paragraph (b) of this section is a reportable event as described in § 50.55(e), § 50.72 and § 50.73. The affected applicant or licensee shall propose immediate steps to demonstrate compliance or bring plant design or operation into compliance with § 50.46 requirements.

4. In 10 CFR Part 50 Appendix K, paragraph II.1.b is removed, paragraph II.1.c is redesignated II.1.b, the text of paragraph I.C.5.b and paragraph II.1.b and II.5 are revised, and a new section I.C.5.c added to read as follows:

Appendix K—ECCS Evaluation Models

* * *

I. Required and Acceptable Features of the Evaluation Models* * *

C. Blowdown Phenomena* * *

5. Post-CHF Heat Transfer Correlations* * *

b. The Groeneveld flow film boiling correlation (equation 5.7 of D. C. Groeneveld, "An Investigation of Heat Transfer in the Liquid Deficient Regime's," AECL-3281, revised December 1969) and the Westinghouse correlation of steady-state transition boiling ("Proprietary Redirect/ Rebuttal Testimony of Westinghouse Electric Corporation," USNRC Docket RM-50-1, page 25-1, October 26, 1972) are acceptable for use in the post-CHF boiling regimes. In addition the transition boiling correlation of McDonough, Milich, and King (J. B. McDonough, W. Milich, E.C. King, "An Experimental Study of Partial Film Boiling Region with Water at Elevated Pressures in a Round Vertical Tube," Chemical Engineering Progress Symposium Series, Vol 57, No. 32, pages 197-208, (1961) is suitable for use between nucleate and film boiling. Use of all these correlations shall be restricted as follows:

* * *

c. Evaluation models approved after (effective date of rule) which make use of the Dougall-Rohsenow flow film boiling correlation (R.S. Dougall and W.M. Rohsenow, "Film Boiling on the Inside of Vertical Tubes with Upward Flow of Fluid at Low Qualities, MIT Report Number 9079 26, Cambridge, Massachusetts, September 1963) shall not use this correlation under conditions where nonconservative predictions of heat transfer result. Evaluation models which make use of the Dougall-Rohsenow correlation and were approved prior to (effective date of rule) continue to be acceptable until such time that a change is made to, or an error is corrected in, the evaluation model that results in a significant reduction in the overall conservatism in the evaluation model. At that time continued use of the Dougall-Rohsenow correlation under conditions where nonconservative predictions of heat transfer result would no longer be acceptable. For this purpose, a significant reduction in the calculated peak fuel cladding temperature of at least 50°F from that which would have been calculated on (effective date of rule) due either to individual changes or error corrections or the net effect of an accumulation of changes or error corrections.

II. Required Documentation

1.a. * * *

b. A complete listing of each computer program, in the same form as used in the evaluation model, shall be furnished to the Nuclear Regulatory Commission upon request.

* * *

5. General Standards for Acceptability—Elements of evaluation models reviewed will include the technical adequacy of the calculational methods, including: for models

covered by § 50.46(a)(1)(ii), compliance with required features of Section I of this Appendix K; and, for models covered by § 50.46(a)(1)(i), assurance of a high level of probability that the performance criteria of § 50.46(b) would not be exceeded.

Dated at Washington, DC this 26th day of February, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-4431 Filed 3-2-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Rel. No. 34-24135; File No. S7-5-87]

Request for Comments on Proposed Rules 3a43-1 and 3a44-1

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Rulemaking.

SUMMARY: The Commission is publishing for comment proposed rules to implement provisions of the Government Securities Act of 1986 that authorize the Commission, after consultation with the Commodity Futures Trading Commission, to except from the definitions of government securities broker and government securities dealer certain persons directly or indirectly regulated by the Commodity Futures Trading Commission whose government securities activities are incidental to their futures business. The first proposed rule defines as incidental certain transactions for customers by futures commission merchants, primarily as agent, subject to conditions designed to assure that customer funds and securities are safeguarded and that such customer transactions are not advertised or solicited. The second proposed rule defines as incidental certain principal transactions by CFTC-regulated persons including transactions pursuant to futures contracts, exchange for physicals transactions with other CFTC-regulated persons, and certain investment transactions and proprietary hedging and arbitrage transactions with government securities brokers, government securities dealers, and, in some cases, banks.

DATE: Comments should be submitted by April 2, 1987.

ADDRESSES: All comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Washington, DC 20549, and should refer to File No. S7-5-

87. All submissions will be available for public inspection at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT:

Lynne G. Masters, Esq., at (202) 272-2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

Introduction

On October 28, 1986, the Securities Exchange Act of 1934 (the "Exchange Act") was amended by Pub. L. No. 99-571, the Government Securities Act of 1986 (the "Government Securities Act"). The Government Securities Act provides for the regulation of government securities brokers and government securities dealers. The regulatory system to be established under the Government Securities Act is a limited one in that it does not provide for regulation that would affect particular transactions in government securities, e.g., margin or suitability regulation. Instead, the Government Securities Act requires the Secretary of the Treasury (the "Treasury") to adopt rules concerning the financial responsibility, protection of securities and funds, recordkeeping, reporting, and audit of government securities brokers and government securities dealers. The Commission is to provide for the registration of government securities brokers and government securities dealers that are not financial institutions or registered broker-dealers. Financial institutions and registered broker-dealers are required to file notice of their government securities broker or government securities dealer status with their appropriate regulatory agency.

Under the Government Securities Act, the terms government securities broker¹

¹ New section 3(a)(43) of the Exchange Act defines a government securities broker as:

any person regularly engaged in the business of effecting transactions in government securities for the account of others, but does not include—

(A) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection; or

(B) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

and government securities dealer² do not include any person registered with the Commodity Futures Trading Commission ("CFTC"), any contract market designated by the CFTC, such a contract market's affiliated clearing organization³ or any floor trader on such a contract market (hereinafter collectively referred to as "CFTC-regulated persons") solely because such person effects transactions in government securities that the Commission, after consultation with the CFTC, has determined to be incidental to such person's futures-related business.

The Government Securities Act does not set forth standards the Commission is to apply in making its determination. Accordingly, the standards for rulemaking and definitions set forth in sections 23(a) and 3(b) of the Exchange Act apply. These sections authorize rulemaking necessary and appropriate to implement the provisions of the Exchange Act, including the Government Securities Act, and definitions of terms consistent with the provisions and purposes of the Exchange Act. The purposes of the Government Securities Act are set out in findings in section 1(b) of the Government Securities Act. They include "to impose adequate regulation" and "appropriate financial responsibility

² New section 3(a)(44) of the Exchange Act defines a government securities dealer as:

any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise, but does not include—

(A) any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business;

(B) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection;

(C) any bank, unless the bank is engaged in the business of buying and selling government securities for its own account other than in a fiduciary capacity, through a broker or otherwise; or

(D) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

³ The CFTC Division of Trading and Markets has advised the Commission's staff that many commodities clearing organizations are not legally controlling, controlled by, or under common control with designated contract markets ("exchanges"). Nevertheless, in this context, the Commission proposes to interpret the term "affiliated clearing organization" to include those clearing organizations that have a contractual or customary arrangement to clear futures contracts traded on a particular futures exchange.

... and related regulatory requirements" on government securities brokers and government securities dealers.

The Government Securities Act requires the Commission to consult with the CFTC in determining what government securities activities are incidental to a CFTC-regulated person's futures-related business. Accordingly, the Commission has consulted with the CFTC staff concerning activities incidental to the futures-related business. The CFTC Division of Trading and Markets reviewed and submitted preliminary comments on each of the proposed exceptions.⁴ The Commission will continue to consult with the CFTC during the comment period on the appropriate scope of these rules.

The proposed rules except, under specific conditions, certain unsolicited transactions for customers that are directly related to futures positions held by customers. The proposed rules also except certain principal transactions of CFTC-regulated persons in government securities that do not usually involve customers.

Customer-related Transactions

Proposed rule 3a43-1 concerns customer-related transactions⁵ that, but for the Commission's determination, might cause a futures commission merchant regulated by the CFTC to be considered a government securities broker or government securities dealer.⁶ Futures commission merchants take orders for execution on futures exchanges and carry customer accounts. In connection with this business, they may act as agent for futures customers in effecting transactions in government securities or engage as principal in certain combination transactions that involve both futures and government securities.

The legislative history of these exceptions suggests that, in determining whether such customer activity is futures-related, the Commission should assure that the government securities

activities of such customers are protected by the regulatory scheme administered by the Commodity Futures Trading Commission.⁷ Accordingly, the proposed rule contains a requirement that the funds and securities involved in the government securities transactions proposed to be determined to be incidental to the futures-related business be held in a customer segregation account subject to the CFTC's rules at 17 CFR 1.20 through 1.30. In order to further assure that the transactions proposed to be excepted are truly incidental to a futures commission merchant's business, there is a second condition that requires that the transactions in government securities be unsolicited.⁸ Accordingly, no selling effort would be permitted by those who seek to avail themselves of this exception.⁹ In addition, to further assure that these transactions are incidental and to avoid the use of the exceptions to circumvent securities self-regulatory organization authority to regulate government securities advertising, there is a condition that prohibits a futures commission merchant from advertising that it is in the business of effecting transactions in government securities.

The first prong of the rule excepts agency transactions for three different purposes. The first transaction proposed to be excepted is an agency transaction in government securities to effect delivery pursuant to a futures contract. Currently, three commodities exchanges actively trade contracts on government securities.¹⁰ Futures commission

merchants regularly make and take delivery of the securities underlying these contracts at expiration as agent for customers. In addition, futures commission merchants may purchase a government security as agent for a customer for the purpose of making delivery. These activities are integral to the operation of the futures markets. Accordingly, the Commission proposes to determine that they are incidental to a futures commission merchant's futures-related business.

The second type of agency transaction proposed to be excepted is the purchase of government securities by a futures commission merchant for customers for deposit as margin. This activity was specified in the Senate Report as an example of the type of activity incidental to the futures-related business.¹¹ Customers frequently specify that their initial margin deposits be invested in Treasury bills in order to earn interest on their funds. Futures commission merchants make these investments as an accommodation to customers. Funds and securities deposits as margin with a futures commission merchant are subject to the strict segregation rules of the CFTC.¹²

The third type of agency transaction proposed to be excepted would be transactions in government securities for bona fide hedging or arbitrage of futures or options on futures positions.¹³ In the context of hedging or arbitrage activities between cash and derivative markets, a variety of strategies are utilized. The Commission preliminarily believes that unsolicited agency transactions in government securities for bona fide hedging and arbitrage of futures and options on futures positions, when funds and securities associated with such transactions are carried in a CFTC-regulated customer segregation account, should be treated as incidental to a futures commission merchant's futures business. This belief is based on the limited regulatory purpose of the Government Securities Act—assuring

⁷ Report of the Senate Committee on Banking, Housing and Urban Affairs to accompany S. 1416, S. Rep. No. 426, 99th Cong. 2d Sess. 19 (1986) [hereinafter cited as Senate Report].

⁸ The proposed requirement that transactions be unsolicited in order to qualify as incidental parallels the requirement proposed by the Treasury that, with limited exceptions, financial institutions not actively solicit government securities transactions in order to qualify for the proposed exemption from regulation as a government securities broker. See proposed rule 17 CFR 401.3.

⁹ The limitation on solicitation would not prohibit a futures commission merchant from advising its customers generally of the types of government securities transactions it can effect.

¹⁰ The Chicago Board of Trade ("CBT") trades Treasury bond futures and options on those futures, Treasury note futures and options on those futures, and GNMA futures; the Chicago Mercantile Exchange ("CME") trades Treasury bill futures and options on those futures; the Mid-America Commodity Exchange ("Mid-America") also trades Treasury bill futures and Treasury bond futures, but the size of the contracts is one-half the size of the contracts traded on the CBT and the CME respectively.

¹¹ Senate Report at 19.

¹² 17 CFR 1.20-1.30.

¹³ No definition has been proposed for "bona fide hedging and arbitrage" transactions. In general, the Commission believes that these terms comprehend the purchase or sale of government securities to reduce the risk of a futures position or to take advantage of pricing disparities between the government securities and futures contracts for government securities. The Commission acknowledges that bona fide hedging and arbitrage transactions may involve government securities of a different type, maturity, or coupon than the government security that is the subject of the futures contract and that there may be residual basis risk in a hedging or arbitrage position. Comment is solicited on whether a definition is needed.

⁴ Letter from Kevin M. Foley, Chief Counsel, Division of Trading and Markets, CFTC, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated February 18, 1987.

⁵ The term customer is defined by reference to CFTC rules, 17 CFR 1.3(k) and 1.3(j), to avoid any confusion on the part of CFTC-regulated persons as to its meaning.

⁶ The Commission has not proposed to except commodity pool operators who effect transactions in government securities as agent for the pools they operate. The Commission believes that generally such activities would not come within traditional interpretation of the definition of "broker" since the commodity pool operators are not separately compensated for effecting transactions for commodity pools they operate. See L. Loss, Securities Regulation, Vol. II, at 1299 (2d ed. 1961).

financial responsibility and the protection of customer funds and securities—and the adequacy of CFTC-regulation in assuring the same protection to customers that would be derived from the application of the requirements under the Government Securities Act.¹⁴ Specifically, the CFTC's net capital rule,¹⁵ as it applies to futures and government securities positions, is essentially identical to rule 15c3-1 under the Exchange Act, the net capital rule applicable to registered broker-dealers. In addition, as discussed above, the CFTC imposes segregation requirements on all cash and securities in a customer futures trading account held by a futures commission merchant. Accordingly, the Commission preliminarily believes that, where a futures commission merchant engages only in limited agency transactions in government securities that are directly related to customers' positions in futures or options on futures, such transactions are incidental to its futures-related business and it is not necessary to require registration and apply regulation as a government securities broker.¹⁶

The Division of Trading and Markets of the CFTC has submitted a letter that suggest that the exception for the purchase of government securities for deposit as initial margin may be too narrow, since the proposed exceptions do not provide for the investment of excess customers funds on deposit for futures or options on futures trading ("free credit balances").¹⁷ The

Commission has preliminarily determined not to propose such an exception at this time because it might provide futures commission merchants with an open-ended ability to effect customer transactions in government securities without registering as government securities brokers.

Comment is solicited, however, regarding the need for such an exception. In particular, commenters may wish to discuss whether objective standards could be implemented that would permit futures commission merchants generally to accommodate a customer's desire to invest excess cash in his account without permitting the account to be effectively converted into an account primarily for the purchase of government securities. For example, commenters might discuss the appropriateness of the Commission formulating standards relating to the amount of agency business done by a futures commission merchant under this and other exceptions. Such limits might be formulated in terms of the number of transactions, dollar amount of compensation received for effecting agency transactions in government securities, or percentage of firm's revenues that are derived from effecting agency transactions in government securities. Commenters, and particularly futures commission merchants, who believe that this or other types of expanded exemptions are needed for agency transactions in government securities are asked to supply historical data on these three types of criteria and to indicate how such standards could be independently verified should such criteria be adopted.

Another type of objective standard that commenters may wish to discuss in addressing the CFTC staff concern relates to the short term nature of the investment of funds that are primarily utilized for futures-related trading. Commenters are requested to identify specifically the securities (including issuers and maturities) and arrangements that are currently utilized by customers to invest free credit balances that are primarily utilized in futures-related trading. In particular, to what extent are such investments made in Treasury securities sold to customers subject to repurchase agreements?

The second prong of the rule contains the only exception for transactions as principal with customers. This exception for exchange of futures for physicals transactions also is subject to the three requirements and conditions described above.¹⁸ An exchange of futures for

physicals transaction is a type of combination cash and futures transaction that is exempt from the Commodity Exchange Act's requirements for competitive execution on a futures exchange floor. CFTC rules, by reference to contract market rules, permit such off-exchange transactions.¹⁹ Generally, these transactions involve one party who simultaneously buys a government security and sells (or gives up a long) futures contract while the other party to the transaction simultaneously sells a government security and buys (or receives a long) futures contract, at a price difference mutually agreed upon. And other purposes, these transactions permit the establishment, transfer, or close-out of hedged or arbitrage positions.²⁰ Since the futures commission merchant is often the counterparty to such a transaction, this type of transaction, if unsolicited, may be done as principal with a customer and as agent for a customer.²¹ Unsolicited agency transactions could be taken to another futures commission merchant or a government securities dealer for execution.²²

Principal Transactions

Proposed rule 3a44-1 concerns principal activities that, but for the Commission's determination, might cause a person regulated by the CFTC to be considered a government securities dealer. Because Congress intended that the Commission except CFTC-regulated persons only where their government securities activities are closely related to their futures activities, the rule is applicable only to persons who do not

¹⁴ The legislative history suggests that the adequacy of CFTC regulations to assure the protection of investors that would otherwise be provided by application of the Government Securities Act is a valid consideration in the Commission's determination. Senate Report at 19. Because the proposed Commission determination on this basis closely parallels the standards for an exemption from registration and regulation under the Government Securities Act, which is a function of the Secretary of the Treasury, the Commission staff has consulted the staff of the Treasury Department in formulating this proposal and will continue to consult with them during the comment period about this proposed exception.

¹⁵ 17 CFR 1.17.

¹⁶ The government securities regulatory scheme contrasts sharply with the broad sales practice and other investor protection provisions applicable to transaction in corporate and municipal securities under the Exchange Act, the rules thereunder, and the rules of the self-regulatory organizations. Any futures commission merchant effecting transactions with customers in corporate or municipal securities would be required to register as a broker or dealer whether or not those transactions were directly related to futures or options on futures positions.

¹⁷ Letter from Kevin M. Foley, Chief Counsel, Division of Trading and Markets, CFTC, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated February 18, 1987. This letter will be placed in the public file.

¹⁸ See text at notes 7 through 9, *supra*.

¹⁹ 17 CFR 1.38. Chicago Mercantile Exchange Rule 538, Chicago Board of Trade Rule 444.01(c).

²⁰ A futures commission merchant that engages in a series of transactions with a customer that is structured to result in a purchase or sale of a government security without the establishment, transfer, or close-out of a related futures position would not be eligible for exception from the definitions of government securities broker and government securities dealer. Comment is solicited on whether a definition of "exchange of futures for physicals transaction" along the lines of the description in the text should be developed to further clarify this position.

²¹ The requirement that such transaction be unsolicited would not prohibit a futures commission merchant from advising its customer of a request or suggestion from a futures exchange or related clearing organization that the customer consider liquidating or exchanging a large futures position by means of an exchange of futures for physicals transaction.

²² Since such a transaction would be unsolicited from the perspective of the futures commission merchant's contra party and from its perspective would be with a futures commission merchant, not a customer, participation in the transaction would be excepted under the standards of both proposed rule 3a43-1 and proposed rule 3a44-1.

hold themselves out or advertise as government securities dealers.²³ This rule does not apply to transactions with customers except for making or taking delivery of a government security pursuant to a futures contract.

The first activity proposed to be excepted, consistent with proposed rule 3a43-1(b)(1)(i), is the sale of purchase of government securities for delivery pursuant to a futures contract. As noted above, physical delivery pursuant to a futures contract is integral to the trading of government securities futures contracts, and hence clearly is incidental to the functioning of the futures market.

The second activity proposed to be excepted is exchange of futures for physicals transactions between CFTC-regulated persons. This exception permits floor brokers, floor traders, and futures commission merchants to engage in such transactions with one another.²⁴ Thus, for example, the proposed rule would permit a futures commission merchant to solicit as principal a trade directly with a CFTC-regulated person in order to permit a combination cash and futures position taken in a customer-initiated principal transaction to be off-set with a professional transaction.²⁵

The third activity proposed to be excepted is transactions, including transactions involving repurchase agreements and reverse repurchase agreements, by futures commission merchants for investment of customer segregation funds or by a clearing organization for investment of funds it holds. These transactions would be excepted if they are done with a government securities broker or government securities dealer that has registered or filed notice with its appropriate regulatory agencies and with banks.²⁶ The exception specifically permits transactions with banks as well as with those who will be subject to the Government Securities Act regulations, because currently CFTC interpretations on the investment of customer funds

require some of such investments to be with banks.²⁷

The fourth activity proposed to be excepted, consistent with proposed rule 3a43-1(b)(1)(iii), is bona fide hedging or arbitrage transactions. Under the proposed rule, these transactions must be with government securities brokers or government securities dealers who have registered or filed notice with their appropriate regulatory agency. This limitation on the purposes for which and the persons with whom CFTC-regulated persons can trade will help assure that CFTC-regulated persons do not act as dealers without being regulated as government securities dealers.

Request for Comment

Any interested persons wishing to submit written comments on the proposed rules, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so. The legislative history of the provisions suggests that one factor in the Commission's determination is the existence of CFTC regulations and oversight that protect customers in transactions incidental to the futures-related business of CFTC-regulated persons. Further comment on CFTC and futures self-regulatory organization regulation and oversight of the transactions proposed to be excepted is specifically solicited. In addition to the specific requests for comment set forth above, the Commission requests comment on whether the proposed rules, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a)(2) of the Exchange Act.

Costs and Benefits

The proposed rules except from the definition of government securities broker and government securities dealer futures commission merchants and CFTC-regulated persons that effect certain transactions in government securities. By definition, therefore, the rules except these persons from the registration and regulatory provisions of the Government Securities Act and relieve these persons from the costs of compliance with the Government

Securities Act. The rules are intended to reach a variety of activities frequently engaged in by futures commission merchants and CFTC-regulated persons in connection with their futures businesses. To avail itself of the exception, a futures commission merchant (or CFTC-regulated person) must forego any activities that would disqualify it from the exception. This "opportunity foregone" is the only cost of the proposed rules that the Commission has been able to identify.

The benefits of the proposed rules may be viewed in terms of how effectively they implement the intent of Congress that persons otherwise subject to regulations administered by the CFTC should not be subjected to additional, duplicative regulations while at the same time adequately protecting the investing public. The Commission believes that the proposed rules serve the goals of investor protection by relying on the effective system of regulation administered by the CFTC, which ensures that CFTC-regulated persons engaging in incidental government securities transactions will be financially sound and will safeguard customer funds and securities.

Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed rules 3a43-1 and 3a44-1. The Analysis uses certain definitions of "small entities" adopted by the CFTC for purposes of the Regulatory Flexibility Act. The Commission solicits comment on the appropriateness of these definitions for purposes of this rulemaking. The Analysis notes that the objective of the rules is to implement the provisions of the Government Securities Act. The proposed rules except from the definition of government securities broker and government securities dealer certain persons subject to CFTC oversight by defining as incidental to their futures-related business certain activities in government securities. Therefore, the proposed rules reduce cost burdens on small futures commission merchants and other small CFTC-regulated entities. Of course in order to avail itself of this exception a small futures commission merchant (or other small CFTC-regulated persons) must forego engaging in the activities that would disqualify it for the exception. The Commission invites comment on the Initial Regulatory Flexibility Analysis. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Lynne G. Masters, Esq., Division of Market

²³ For example, a person who runs a matched book of repurchase agreements and reverse repurchase agreements would be holding himself out as a government securities dealer, because such a person is known to be willing regularly to engage in purchases and sales of government securities.

²⁴ A futures commission merchant's unsolicited transactions as agent or principal would also be excepted under proposed rule 3a43-1(b)(2).

²⁵ As noted above, Rule 3a43-1 permits futures commission merchants to effect unsolicited exchange of futures for physicals transactions for or with a customer.

²⁶ The term bank is defined in section 3(a)(6) of the Exchange Act.

²⁷ See e.g., Financial and Segregation Interpretation No. 2—Use of Customer's Funds for the Purchase of Obligations Under Repurchase Agreements, § 7112 CCH Commodity Futures Law Reports (1975).

Regulation, Securities and Exchange Commission, Washington, DC 20549, (202) 272-2848.

Statutory Basis and Text of Proposed Rules

Proposed rules 3a43-1 and 3a44-1 are being proposed by the Commission pursuant to Sections 3(a) and (b) and 23(a) of the Securities Exchange Act of 1934.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities, Government securities.

Text of Proposals

In accordance with the foregoing, 17 CFR Part 240 is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citations:

Authority: Sec. 23; 48 Stat. 901, as amended; 15 U.S.C. 78w; * * * Sections 240.3a43-1 and 240.3a44-1 also issued under Sec. 3; 15 U.S.C. 78c;

2. By adding § 240.3a43-1 and § 240.3a44-1 as follows:

§ 240.3a43-1 Customer-related government activities incidental to the futures-related business of a futures commission merchant registered with the Commodity Futures Trading Commission.

(a) A futures commission merchant registered with the Commodity Futures Trading Commission is not a government securities broker or government securities dealer solely because such futures commission merchant effects transactions in government securities that are defined in paragraph (b) of this section as incidental to such person's futures-related business.

(b) Provided that the funds and securities associated with such government securities transactions are maintained in a customer segregation account subject to regulation under 17 CFR 1.20 through 1.30, the government securities transactions are unsolicited transactions, and the futures commission merchant does not advertise that it is in the business of effecting transactions in government securities, the following transactions in government securities are incidental to the futures-related business of any futures commission merchant:

(1) Transactions as agent for a customer—

(i) To effect delivery pursuant to a futures contract;

(ii) For deposit as initial margin for futures or options on futures trading; and

(iii) For bona fide hedging or arbitrage of futures or options on futures positions; and

(2) Exchange of futures for physicals transactions for or with a customer.

(c) Definitions.

(1) "Customer" for futures customers has the meaning set forth in 17 CFR 1.3(k) and for options on futures customers has the meaning set forth in 1.3(jj).

(2) "Unsolicited transaction" means a transaction that is not initiated or recommended to a customer by the futures commission merchant, a business affiliate that is controlled by, controlling, or under common control with the futures commission merchant, or an introducing broker that is guaranteed by the futures commission merchant.

(3) "Futures" and "futures contracts" mean contracts for future delivery traded on a contract market designated by the Commodity Futures Trading Commission.

(4) "Options on futures" means puts or calls on a futures contract traded on a contract market designated by the Commodity Futures Trading Commission.

§ 240.3a44-1 Proprietary government securities transactions incidental to the futures-related business of CFTC-regulated person.

(a) A person registered with the Commodity Futures Trading Commission, a contract market designated by the Commodity Futures Trading Commission, such a contract market's affiliated clearing organization, or any floor trader on such a contract market (hereinafter referred to collectively as a "CFTC-regulated person") is not a government securities dealer solely because such person effects transactions for its own account in government securities that are defined in paragraph (b) of this section as incidental to such person's futures-related business.

(b) Provided that such person does not advertise or otherwise hold itself out as a government securities dealer, the following transactions in government securities for its own account are incidental to the futures-related business of any CFTC-regulated person:

(1) Transactions to effect delivery of a government security pursuant to a contract for future delivery traded on a contract market designated by the

Commodity Futures Trading Commission;

(2) Exchange of futures for physicals transactions with a CFTC-regulated person; and

(3) Transactions (including repurchase agreements and reverse repurchase agreements) involving segregated customer funds and securities or funds and securities held by a clearing organization, with

(i) A government securities broker or government securities dealer that has registered with the Commission or filed notice pursuant to section 15C(a) of the Act or

(ii) A bank.

(4) Transactions for bona fide hedging or arbitrage of futures or options on futures positions with a government securities broker or government securities dealer that has registered with the Commission or filed notice pursuant to Section 15C(a) of the Act.

(c) Definitions.

(1) "Customer" for futures customers has the meaning set forth in 17 CFR 1.3(k) and for options on futures customers has the meaning set forth in 17 CFR 1.3(jj).

(2) "Futures" means contracts for future delivery traded on a contract market designated by the Commodity Futures Trading Commission.

(3) "Options on futures" means puts or calls on a futures contract traded on a contract market designated by the Commodity Futures Trading Commission.

By the Commission.

Jonathan G. Katz,
Secretary.

February 25, 1987.

[FR Doc. 87-4384 Filed 3-2-87; 8:45 am]

BILLING CODE 8010-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[OPP-300161; FRL 3164-7]

Daminozide; Proposed Revocation and Amendment of Food and Feed Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the:

(1) Revocation of the food additive regulation for dried prunes (21 CFR 193.410), (2) amendment (reduction) of the food additive regulation for concentrated tomato products (21 CFR

193.410), and (3) amendment (reduction) of the food additive regulation for the animal feed dried tomato pomace (21 CFR 561.360) concerning residues of daminozide (butanedioic acid mono (2,2-dimethylhydrazide)), resulting from carryover and concentration of residues in these processed foods and feeds when present therein as a result of application of the plant regulator daminozide to growing plums (fresh prunes) and tomatoes. This proposed action is being initiated by EPA to remove one food additive regulation which is no longer necessary, and to amend (reduce) other food additive regulations which specify residue levels that are currently higher than needed.

DATE: Written comments, identified by the document control number [OPP-300161], should be received on or before May 4, 1987.

ADDRESS: By mail, submit comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 236, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Patricia Critchlow, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION:

Elsewhere in this issue of the Federal Register, EPA has issued a related document [OPP-300160] which proposes

the revocation or amendment of tolerances for residues of daminozide in or on various raw agricultural commodities, including plums (fresh prunes) and tomatoes.

The food additive regulations for daminozide in the dried prunes and concentrated tomato products and in the animal feed dried tomato pomace were established in September 12, 1975 (40 FR 42343), based on residue data available to EPA at that time.

Data submitted in 1975 showed that there is essentially no loss of daminozide residues during processing of tomatoes, and that daminozide residues concentrated 5-fold during the processing of tomato food products from treated fresh tomatoes. Residue data on processed tomato pomace for animal feed use were not available in 1975.

The subsequent establishment of the food additive regulations for concentrated tomato products and dried tomato pomace was based on a consideration of the available residue data, additional information on tomato processing regarding the expected increase in solids content in concentrated tomato products over the starting material, and dry-down factors (based at that time on Florida agricultural practices) for processing of dried tomato pomace from fresh tomatoes. The resulting food additive tolerances were 320 ppm in concentrated tomato products and 600 ppm in dried tomato pomace.

No new residue data on processed tomatoes have been submitted since the foliar applications to tomatoes were discontinued. However, additional residue data were submitted in 1985 reflecting residues in fresh tomatoes from the registered use of daminozide on tomato transplants. Using processing data and theoretical concentration factors for various processed tomato food products, the Agency has concluded that a tolerance level of 3 ppm is adequate for concentrated tomato products and a level of 10 ppm is adequate for dried tomato pomace.

Additional residue data were requested in early 1986 to allow a determination of the level of residues of daminozide and its breakdown product and contaminant, UDMH (unsymmetrical dimethylhydrazine), in fresh and processed tomatoes resulting from the use of the pesticide on tomato transplants. The Registration Standard for daminozide stated that an insufficiency of available residue data precluded a final reassessment of "all" daminozide tolerances until such time as data gaps were filled. However, EPA

considers it appropriate to propose at this time that the current food additive regulations for processed tomatoes be amended to reflect the expected lower residue levels which more closely approximate the actual residue situation. If new residue data are submitted reflecting a residue decline pattern different than expected, the amended food additive regulations will be reevaluated.

The registration for the use of daminozide on plums was voluntarily cancelled by the registrant in August 1984. Therefore, the food additive regulation for residues of daminozide in dried prunes is no longer necessary.

Daminozide is not a persistent chemical and, since it has not been registered for use on plums (fresh prunes) for over 2 years (since late 1984), there is no anticipation of residues in dried prunes due to environmental contamination after the food additive regulation is revoked. Consequently, no action level will be recommended to replace the regulation upon its revocation. Although the Agency does not expect residues to be present in imported prunes, EPA is soliciting comments, via this notice, on whether there might be a need to modify the proposal to address residues in the imported commodity.

Based on the information considered by the Agency and discussed in detail herein and in the related Federal Register document [OPP-300160], EPA proposes to (1) revoke the food additive regulation of 135 parts per million (ppm) for residues of daminozide in dried prunes, and (2) to amend (reduce) the food additive regulation of 320 ppm to 3 ppm for residues in concentrated tomato products and the food additive regulation of 600 ppm to 10 ppm for residues in dried tomato pomace, resulting from carryover and concentration of residues in these processed foods and feeds when present therein as a result of pesticide application to the related growing crops.

Interested persons are invited to submit written comments on this proposal to revoke the food additive regulation for residues of daminozide in dried prunes, and to amend the food additive regulations for residues of daminozide in concentrated tomato products and dried tomato pomace. Comments should bear a notation indicating the document control number, [OPP-300161]. Three copies of the comments should be submitted to facilitate the work of the Agency and of

others interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291, and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 236, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed regulatory action is not a major regulatory action, i.e., it will not have an adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises. Revocation of the food additive regulation for residues of daminozide in dried prunes, and amendment (reduction) of the food additive regulations for residues of daminozide in concentrated tomato products and in the animal feed dried tomato pomace should aid U.S. enterprises by eliminating any unfair advantage that foreign enterprises may have gained through the continuance of these food additive regulations.

This proposed rule has been reviewed by the office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small government, or small organizations.

As this regulatory action is intended to prevent the sale of foodstuffs primarily where the subject pesticide has been used in an unregistered or illegal manner, it is anticipated that little or no economic impact would occur at any level of business enterprises.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 27, 1987.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 21 CFR Chapter I be amended as follows:

PART 193—[AMENDED]

1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

b. Section 193.410 is revised to read as follows:

§ 193.410 Daminozide.

Tolerances are established for residues of the plant regulator daminozide (butanedioic acid mono (2,2-dimethylhydrazide)) in the following processed food commodities, when present therein as a result of the application of the pesticide to the growing crop.

Food commodities	Parts per million
Tomato products, concentrated.....	3

PART 561—[AMENDED]

2. In Part 56:

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

b. Section 561.360 is revised to read as follows:

§ 561.360 Daminozide.

Tolerances are established for residues of the plant regulator daminozide (butanedioic acid mono (2,2-dimethylhydrazide)) in the following animal feed commodities, when present therein as a result of the application of the pesticide to the growing crop.

Food commodities	Parts per million
Tomato pomace, dried.....	10

[FR Doc. 87-4471 Filed 3-2-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 231a

[DoD Instruction 1000.10]

Procedures Governing Credit Unions on DoD Installations

AGENCY: Department of Defense.

ACTION: Revised proposed rule.

SUMMARY: An amendment to modify procedures for lease of land to credit unions that construct buildings on DoD installations was published in 51 FR 40828 November 10, 1986. Adoption of that rule would have required credit unions not extending their leases to pay rent, utilities and maintenance when, under lease terms, title to leasehold improvements passed to the Government. Based upon comments received, that proposed rule has been revised substantially. The revised proposed amendment, while retaining the requirement to pay for maintenance and utilities, removed land rent for all but excess ground if the credit union maintains a membership comprised of at least 95 percent Government employees, as defined in section 1770 of the Federal Credit Union Act. However, it is the Government's preference that leases for credit union-constructed leasehold improvements be renewed on or before expiration, subject to the stated stipulations, so that title to such improvements continues to vest with the credit union.

DATES: Comments should be received on or before April 2, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald L. Adolphi, Office of the Deputy Assistant Secretary of Defense (Management Systems), the Pentagon, Room 1A658, Washington, D.C. 20301-1100, telephone (202) 697-8281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 231a

Credit unions, Defense credit unions.

PART 231a—[AMENDED]

1. The authority citation for Part 231a continues to read as follows:

Authority: 10 U.S.C. 136.

2. Section 231a.5 is proposed to be amended by revising paragraph (j)(3) and by adding paragraph (j)(4) to read as follows:

§ 231a.5 General operating policies and procedures.

* * * * *

(j) * * *

(3) If determined, in accordance with 10 U.S.C. 2667, an existing lease of land may be extended prior to expiration of its term. Passage of title to facilities will be deferred until all extensions have expired. Such extensions shall be for periods not to exceed five years at the appraised fair market rental of the land only as determined on the date of each such extension. The credit union will continue to maintain the premises and pay for utilities and services furnished in accordance with 32 CFR Part 288.

(4) When, under terms of a lease or extension, title to improvements passes to the Government, the credit union shall be given first choice to continue occupying those improvements under a facility lease.

(i) Such leases shall require credit union leases to maintain the premises and reimburse the Government for utilities and services furnished, in accordance with 32 CFR Part 288.

(ii) In addition, leases for credit unions that meet the 95 percent membership criterion cited in § 231a.5(h), shall require leasees to pay fair market rental for excess land underlying improvements, as specified in DoD 4270.1-M. Leases for credit unions no longer qualifying under the 95 percent rule shall require leasees to pay fair market rental for all land underlying the improvements.

Linda M. Lawson,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

February 23, 1987.

[FR Doc. 87-4211 Filed 3-2-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD12 87-01]

Anchorage Regulations; San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to amend the southwestern boundary of Anchorage 5 in San Francisco Bay by extending it 450 yards to the west. This would increase the anchorage area in the deeper waters needed by vessels of increasing size. This increase will minimally reduce the width of the adjacent northbound shipping channel. The Coast Guard also proposes to eliminate Anchorage 25. The geographics of this anchorage and the river conditions makes use of this area

for the anchoring of vessels dangerous to navigation.

DATES: Comments should be received on or before April 17, 1987.

ADDRESSES: Comments should be mailed or hand-delivered to Marine Safety Division, Twelfth Coast Guard District, Coast Guard Island, Building 54-B, Room 250, Alameda, CA 94501. The comments will be available for inspection and copying between 7:00 a.m. and 3:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: LT David A. Conklin at (415) 437-3465.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD12 87-01) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The proposed rules may be revised in light of comments received. All comments submitted before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LT David A. Conklin, project officer, Twelfth Coast Guard District Marine Safety Division, and LCDR Wayne C. Raabe, project attorney, Twelfth Coast Guard District Legal Office.

Discussion of the Proposed Regulation

Anchorage 5 is frequently used by vessels returning from upriver ports to refuel before continuing to sea. The vessels' deep drafts generally require that they be anchored at the southern portion of the anchorage. Because of the shape and limited area available, it is difficult to anchor without the vessels extending beyond the limits of the designated anchorage, into either Southampton Channel or the northbound traffic lane. The proposed change would increase Anchorage 5 by 450 yards in width at the southern tip, and decrease the eastern side of the northbound channel by 250 yards. This still leaves a northbound traffic lane 550 yards wide.

Anchorage 25 was established at a time when vessels were physically smaller and could easily adapt to the river conditions. It is inadequate for the river conditions of today. Located at a difficult bend in the river with strong currents, frequent high winds and seasonal fog, the anchorage of vessels within Anchorage 25 can be in conflict with transiting traffic. The length and deeper draft of today's larger vessels require them to anchor near the northern limits of the anchorage, closest to transiting vessels. In this position, an anchored vessel can take up a considerable part of the navigable channel, thereby becoming an extreme hazard to navigation. Alternative anchorages are available to accommodate vessels that previously used Anchorage 25.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage Grounds.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Chapter I of Title 33, Code of Federal Regulations, as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.12a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.224 is amended by revising paragraph (e)(3) to read as follows:

§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, Calif.

* * * * *

(e) * * *

(3) *Anchorage No. 5*. In San Francisco Bay beginning on the northwest shore of Red Rock at latitude 37°55'48" N., longitude 122°25'52" W.; thence westerly towards the San Francisco Bay North Channel to latitude 37°55'50" N., longitude 122°26'32" W.; thence southerly along the San Francisco Bay North Channel to latitude 37°54'49" N., longitude 122°26'39" W.; thence southeasterly to latitude 37°54'04" N., longitude 122°26'07" W.; thence southeasterly to latitude 37°53'23" N., longitude 122°25'26" W.; thence easterly to latitude 37°53'23" N., longitude 122°25'09" W.; thence northerly along the Southampton Shoal Channel to latitude 37°55'19" N., longitude 122°25'33" W.; thence to the southeast shore of Red Rock at latitude 37°55'42" N., longitude 122°25'45" W.; thence along the shoreline to the point of beginning.

3. Section 110.224 is further amended by removing paragraph (e)(17) and by redesignating paragraphs (e)(18) through (e)(21) as paragraphs (e)(17) through (e)(20) respectively.

Dated: February 17, 1987.

John D. Costello,

Vice Admiral, U.S. Coast Guard Commander,
Twelfth Coast Guard District.

[FR Doc. 87-4307 Filed 3-2-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300160; FRL 3164-6]

Daminozide; Proposed Revocation and Amendment of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes (1) the revocation of tolerances for residues of the plant regulatory daminozide (butanedioic acid mono (2,2-dimethylhydrazide)) in or on brussels sprouts, melons, peppers, and plums, and (2) the amendment of the tolerance for residues of daminozide in or on tomatoes. These proposed actions are being initiated by EPA to remove four tolerances for commodities for which there are no related registrations, and to amend (reduce) one tolerance which has been determined to be higher than needed.

DATE: Written comments, identified by the document control number [OPP-300160], should be received on or before May 4, 1987.

ADDRESS: By mail, submit comments to: Information Services Section, Program

Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to:

RM. 236, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in RM. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail:

Patricia Critchlow, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: RM. 716, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA issued a Data Call-In Notice on August 25, 1983, to registrants of the plant regulator daminozide to obtain data which had been determined to be necessary for the Agency to assess the dietary risk of exposure to daminozide and its breakdown product and contaminant, UDMH (unsymmetrical dimethylhydrazine).

One registrant elected not to generate the necessary residue data for certain crops as required by the Data Call-In notice, and chose instead to voluntarily cancel registrations of its daminozide products for use on those crops: brussels sprouts, cantaloupes, and plums (fresh prunes). The only other registrant of a daminozide product did not have any products registered for use on brussels sprouts, cantaloupes (or any other melons), or plums.

The tolerances for residues of daminozide in or on brussels sprouts and plums (fresh prunes) are still effective. The previously-registered use on cantaloupes was covered by a tolerance in or on melons, which is also still effective. Another effective tolerance for residues of daminozide for which there is no registered use is in or

on peppers. Subsequent to the establishment of the tolerance on peppers, EPA refused to register daminozide for use on peppers unless and until additional field performance data was submitted and found adequate. This data deficiency was not resolved and, thus, the use on peppers was not registered.

The existing tolerance for residues in tomatoes is based on residue data resulting from foliar use with a short (7-day) preharvest interval. In 1984 labels for all products registered for use on tomatoes were revised to remove the directions for the foliar use from product labels and to allow use only on tomato transplants prior to transplanting.

The currently registered tomato uses are to greenhouse-grown and field-grown tomato transplants before they are transplanted; thus, the preharvest intervals will exceed 50 days and could be as long as 100 days. Consequently, the residues expected to occur in tomatoes are significantly lower than the established tolerance would indicate or allow.

In 1985 Uniroyal submitted more residue data for the tomato transplant use, indicating that very low levels of residues are expected to result in tomatoes from this use. The residue data indicate that a tolerance of 0.5 ppm would adequately cover residues resulting from the transplant use. Actual residues would be expected to be somewhat lower than 0.5 ppm; however, a level of 0.5 ppm would be in alignment with the Canadian maximum limit for daminozide residues in tomatoes.

This pesticide has previously been the subject of a Special Review initiated by the Agency in 1984; a Registration Standard issued by EPA on June 30, 1984; a Federal Register notice of April 16, 1986 (51 FR 12889), in which EPA proposed to reduce, on an interim basis, the existing tolerance for residues of daminozide in or on apples; and a Federal Register notice of January 16, 1987 (52 FR 1909), which announced the final rule effecting the proposed tolerance reduction for apples.

The Registration Standard stated that an insufficiency of available residue data precluded a final reassessment of "all" daminozide tolerances until such time as data gaps were filled. However, EPA considers it appropriate to amend the current tomato tolerance at this time to a lower level which more closely approximates the actual residue situation.

Based on the fact that daminozide is no longer registered for use on brussels sprouts, melons and plums, and was never registered for use on peppers, and

that a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA now proposed to revoke the tolerances listed in 40 CFR 180.246 for the residues of daminozide in or on brussels sprouts, melons, peppers, and plums (fresh prunes). This action is being taken because the tolerances are no longer necessary.

Since daminozide is not a persistent chemical and the related registered uses have been cancelled for more than 2 years (since late 1984), there is no anticipation of residues in the above-named commodities due to environmental contamination after the tolerances are revoked. Consequently, no action levels will be recommended to replace the tolerances upon their revocation. Although the Agency does not expect residues to be present in imported commodities, EPA is soliciting comments, via this notice, on whether there might be a need to modify the proposal to address residues in imported commodities.

Based on the fact that daminozide is registered for use on tomatoes only to transplant seedlings prior to transplanting, and considering that the available residue data indicate that a tolerance of 0.5 ppm would be adequate to cover residues resulting from the tomato transplant use, EPA now proposes to amend (reduce) the tolerance for residues in or on tomatoes accordingly.

Elsewhere in this issue of the *Federal Register*, the Agency has issued a related proposed rule [OPP-300161] which would revoke the food additive tolerance in 21 CFR 193.410 for residues of daminozide in dried prunes, resulting from application of the pesticide to growing plums (fresh prunes), and amend (reduce) the food additive tolerance in § 193.410 for residues in concentrated tomato products and the food additive tolerance in 21 CFR 561.360 for residues in the animal feed dried tomato pomace, resulting from application of the pesticide to growing tomato plants.

Any person who has registered or submitted an application under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for the registration of a pesticide which contains daminozide may request within 30 days after publication of this document in the *Federal Register* that this proposal to revoke the daminozide tolerances in or on brussels sprouts, melons, peppers and plums (fresh prunes), and to amend the tolerance in or on tomatoes, listed in 40 CFR 180.246, be referred to an advisory committee in

accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on this proposed rule. Comments should bear a notation indicating the document control number [OPP-300160]. Three copies of the comments should be submitted to facilitate the work of the Agency and of other interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291, and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 236, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed regulatory action is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least \$100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

As this regulatory action is intended to prevent the sale of foodstuffs primarily where the subject pesticide has been used in an unregistered or illegal manner, it is anticipated that little or no economic impact would occur at any level of business enterprises.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 27, 1987.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.246 is revised to read as follows:

§ 180.246 Daminozide; tolerances for residues.

(a) Tolerances are established for residues of the plant regulator daminozide (butanedioic acid mono (2,2-dimethylhydrazide)) in or on the following raw agricultural commodities:

Commodities	Parts per million
Cattle, fat.....	0.2
cattle, mby.....	0.2
cattle, meat.....	0.2
Cherries, sour.....	55
Cherries, sweet.....	30
Eggs.....	0.2
Goats, fat.....	0.2
Goats, mby.....	0.2
Goats, meat.....	0.2
Grapes.....	10
Hogs, fat.....	0.2
Hogs, mby.....	0.2
Hogs, meat.....	0.2
Horses, fat.....	0.2
Horses, mby.....	0.2
Horses, meat.....	0.2
Milk.....	(N) 0.02
Nectarines.....	30
Peaches.....	30
Peanuts.....	30
Peanuts, hay.....	20
Peanuts, hulls.....	10
Pears.....	20
Poultry, fat.....	0.2
Poultry, kidney.....	2
Poultry, mby (except kidney).....	0.2
Poultry, meat.....	0.2
Sheep, fat.....	0.2
Sheep, mby.....	0.2
Sheep, meat.....	0.2
Tomatoes.....	0.5

(b) Interim tolerances, to expire on the designated dates, are established for residues of the plant regulator daminozide (butanedioic acid mono (2,2-dimethylhydrazide)) in or on the following raw agricultural commodities

Commodities	Parts per million	Expiration date
Apples.....	20	July 31, 1987

[FR Doc. 87-4472 Filed 3-2-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 433 and 447

[BPO-064-P]

Medicaid Program; State Plan Requirements and Other Provisions Relating to State Third Party Liability Programs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement, in part, those portions of section 9503 of the Consolidated Omnibus Budget Reconciliation Act (Pub. L. 99-272, April 7, 1986) that set forth State plan requirements and other provisions relating to State third party liability programs, specifically certain of those portions that require the Secretary to publish regulations and perform certain other activities within specified timeframes.

The provisions of this document deal with (1) the integration of a State's pursuit of third party claims with its Mechanized Claims Processing and Information Retrieval System and the Secretary's responsibility to develop performance standards to assess TPL collection efforts with respect to this integration; (2) certain exceptions to the cost avoidance method of claims payment in third party liability situations; and (3) provider restrictions and provider penalties related to attempts at collection of cost sharing or portions of those amounts from Medicaid recipients when third party liability has been established.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on April 2, 1987.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration,
Department of Health and Human
Services, Attention: BPO-064-P, P.O.
Box 26676, Baltimore, Maryland 21207

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey
Building, 200 Independence Ave. SW.,
Washington, DC

or

Room 132, East High Rise Building, 6325
Security Boulevard, Baltimore,
Maryland.

In commenting, please refer to BPO-064-P.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

Please address a copy of comments on information collection requirements to:

Office of Information and Regulatory
Affairs, Office of Management and
Budget, Room 3208, New Executive
Office Building, Washington, DC
20503. Attention: Desk Officer of
HCFA

FOR FURTHER INFORMATION CONTACT:

Marlene Jones—Exceptions to Cost
Avoidance, (301) 597-0459
Guy Harriman—System Requirements
and Performance Standards and State
Action Plans, (301) 594-4880
Marty Svolos—Provider Restrictions,
(301) 594-9050

SUPPLEMENTARY INFORMATION:

I. Background

A. General

The Medicaid program provides medical assistance to certain low-income individuals and is administered by the States in accordance with Federal requirements. The program by law is intended to be the payer of last resort; that is, other available third party resources must be used before the Medicaid program pays for the care of an individual eligible for Medicaid.

A third party is any individual, entity or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under a State plan. Examples of liable third parties include commercial insurance companies through employment-related or privately purchased health insurance or through casualty-related coverage available as a result of an accidental injury; payments received directly from an individual who has either voluntarily accepted or been assigned legal responsibility for the health care of one or more Medicaid recipients; fraternal groups; union; or State Worker's Compensation commissions. Other examples of a third party resource would include medical support provided through an absent parent and entities providing medical services.

The overall purpose of State Medicaid third party liability program is to ensure that Federal and State funds are not misspent for covered services to eligible

Medicaid recipients when third party resources exist that are legally liable to pay for those services.

B. Statute Prior to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)

Section 1902(a)(25) of the Social Security Act (the Act) required that State or local Medicaid agencies take all reasonable measures to ascertain the legal liability of third parties to pay for care and services furnished to Medicaid recipients. This section required the agency to seek reimbursement from a third party to the extent that the party is legally liable for Medicaid covered services "arising out of an injury, disease, or disability."

Section 1903 (o) of the Act prohibits Federal matching of State Medicaid payments if a private insurer would have been liable to pay for the medical care, but for a provision that the insurance contract limits or excludes liability when the individual is eligible for Medicaid. Section 1903(d)(2) of the Act provides for consideration of the Federal share of any amounts already recovered by a State from a third party for medical assistance as an overpayment to the State, and for appropriate adjustment of the quarterly Medicaid payments made by the Federal government to the State.

C. Third Party Liability Regulations

1. Current Codified Regulations

Regulations containing third party liability requirements upon which State third party liability programs are based are located at 42 CFR Part 433, Subpart D. The relevant sections for purposes of this proposed rule are §§ 433.138 through 433.140. Section 433.138 (as amended under final regulations published on February 27, 1987 (52 FR 5967)) requires the State agency to take at a minimum certain reasonable measures to determine the legal liability of third parties to pay for services covered under the State's Medicaid State plan. Section 433.139 (as amended under final regulations published on November 12, 1985 (50 FR 46652) and on May 2, 1986 (51 FR 16318)) sets forth provisions for payment of claims involving liable third parties. Before publication of these final regulations, States had flexibility to use either of two methods for processing claims involving third parties. Under the first method, cost avoidance, if the amount of third party liability is established, the agency pays only to the extent that payment allowed under the

agency's payment schedule exceeds the amount of the third party liability. The claim is then returned to the provider with the information necessary for the provider to bill the third party. The second method, "pay and chase", permits the agency to pay the total amount allowed under the agency's payment schedule and then seek reimbursement on a post-payment basis (within specific timeframes) from liable third parties. Section 433.139 now requires State agencies to use only the cost avoidance method of payment, as well as certain specified procedures, when the agency has established the probable existence of third party liability at the time the claim is filed. These requirements apply unless a waiver is requested by the State and approved by HCFA under § 433.139(e)(1) of the regulations.

Under § 433.140, one of the requirements for Federal financial participation in Medicaid payments is that the State agency has fulfilled the requirements of §§ 433.138 and 433.139.

2. Rulemaking Initiatives

As one part of our effort to improve the administration of the Medicaid program and to implement section 9503 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) and section 2651 of the Deficit Reduction Act of 1984 (DEFRA) (Pub. L. 98-369), July 18, 1984) with respect to third party liability, we published in the *Federal Register* on February 27, 1987 a final rule that, in part, as mentioned earlier, amends § 433.138 of the regulations to set forth certain minimum requirements for activities a State must perform as part of its third party liability program. In general, the regulations provide that the State Medicaid agency take reasonable measures to determine the legal obligation of third parties to pay for services under the State's Medicaid plan. At a minimum the State plan would provide for the following: (1) Obtaining certain health insurance information from Medicaid applicants or recipients during the initial application and redetermination processes; (2) conducting, or in some cases attempting to secure agreements to conduct certain types of data exchanges with specific State and Federal agencies, or in some cases alternate sources, to identify legally liable third parties; (3) conducting diagnosis and trauma code edits to identify third party resources; and (4) following other specified procedures regarding frequency of conducting the above activities, follow up, safeguarding information obtained and exchanged, and reporting and reimbursement requirements.

D. Legislation—COBRA OF 1985

1. General

On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) was enacted (Pub. L. 99-272). Section 9503 of COBRA amended section 1902(a)(25) and other sections of the Social Security Act to set forth certain State plan requirements and other provisions relating to third party liability. One provision contained in section 9503 of the Act (9503(c)) requires the Secretary to publish regulations and perform certain other activities within a specified timeframe.

2. COBRA—HCFA's Implementation Plan

We have carefully reviewed this legislation and have developed a strategy for the implementation of section 9503 of COBRA. In order to expedite implementation, wherever possible, we decided to include certain provisions of section 9503 in regulations that were already in process and soon to be published and are developing new rulemaking initiatives only where necessary. This document is specifically designed to address those portions of section 9503 of the Act that require action by the Secretary within a specified timeframe. (The one exception to this is the requirement relating to collection of information during the eligibility processes that we have already included in the final rule on the identification of third party liability resources published February 27, 1987.)

The remainder of this document sets forth our proposals for the remaining third party provisions in section 9503 requiring immediate action. These provisions deal with: (1) The integration of a State's pursuit of third party claims within its Mechanized Claims Processing and Information Retrieval System and the Secretary's responsibility to develop performance standards to assess TPL collection efforts with respect to this integration; (2) certain exceptions to the cost avoidance method of claims payment in third party liability situations; and (3) provider restrictions and provider penalties related to the collection of cost sharing or portions of those amounts from Medicaid recipients when third party liability has been established.

II. Integration of Pursuit of Third Party Claims Within State Mechanized Claims Processing and Information Retrieval Systems

A. MMIS Program Overview

A Medicaid management information system (MMIS) is a mechanized system

of claims processing and information retrieval approved under Part 433, Subpart C and used in State Medicaid programs under title XIX of the Act. The system is used to process Medicaid claims and to retrieve and produce utilization data and management information about medical care and services furnished to recipients.

Section 1903(a)(3) of the Act authorizes Federal matching funds at 75 percent for the operation of approved mechanized claims processing and information retrieval systems. These systems are designed in accordance with basic Federal guidelines. The purpose of these systems is to provide for more efficient, economical, and effective administration of State Medicaid plans. Federal matching is available at 90 percent for expenditures for design, development installation and improvement of an approved MMIS.

Each State Medicaid agency (with some exceptions) is required under section 1903(r) of the Act to have in place an operational and approved MMIS or be subject to reductions of Federal financial participation (FFP). In addition, section 1903(r) of the Act requires us to reduce FFP to State Medicaid agencies that fail to meet MMIS requirements for systems reapproval. A reduction in FFP in State expenditures for operating an MMIS from a total of 75 percent to 50 percent is required, on an incremental basis, if a State Medicaid agency fails to meet any MMIS performance standards or system requirements. The law requires us to reduce FFP by no less than 5 percentage points, and by no more than 25 percentage points. However, we may not reduce a State Medicaid agency's FFP by more than 10 percentage points for any fiscal year. Before the enactment of COBRA we were required to review approved MMIS systems for reapproval yearly; however, now section 9503(b)(2)(A) of COBRA has amended section 1903(r)(4)(A) of the Act to require reapproval only at least once every three years.

A system requirement governs the structure and composition of an MMIS system. Performance standards establish levels of achievement which describe in broad terms the basic requirements of eligibility, support files, orderly, accurate, and timely claims processing and a review of Management Administrative Reporting Subsystem (MARS), Surveillance and Utilization Review (S/URS), and general administration. Under each performance standard are element statements that cover basic operational requirements for approved State MMIS systems. These

elements represent essential functions that must be performed at an acceptable level if the standards are to be met. The current standards and elements were published in a general notice in the *Federal Register* on May 31, 1983 (48 FR 24204). Specific factors and methods of evaluation (MOEs) are used to determine a State's level of performance within each element and the standard. These factors and MOEs are subject to periodic review, modification, or deletion without formal notice in the *Federal Register*. We are required under section 1903(r)(4)(E) of the Act to notify all States of proposed procedures, and of the procedures, Standards, and other requirements which will be used for conducting reapproval of a State's MMIS system.

Evaluation of TPL following implementation of this proposed rule would be accomplished under a new Performance Standard 8—Third Party Liability and Elements P, Q, R, and S (see section II.D.3). This new standard would first be used in FY 1988. Standard 8 would be further defined by factors and MOEs to be developed. States would be notified of these specific criteria by June 30, 1987.

In the FY 1987 Systems Performance Review Guide there are 7 Factors (1B3, 1B4, 1B5, 4H4, 7N7, 7N8, and 7N9) and related MOEs in the Guide to be used to evaluate TPL under the existing standards and elements. Specific criteria to monitor MMIS during FY 1987, including TPL factors, were sent to the States on June 27, 1986. This is an annual notification published prior to June 30 each year as required under section 1903(r)(4)(E) of the Act.

B. Relevant MMIS Regulations

Regulations governing mechanized claims processing and information retrieval systems are located at 42 CFR Part 433, Subpart C. There are three sections of the MMIS regulations relevant to the third party liability provisions contained in COBRA. Section 433.119 sets forth the conditions for reapproval of MMIS systems already approved in accordance with other sections of MMIS regulations. Section 433.120 describes the procedures for reduction of FFP after review for reapproval. Finally, § 433.123 sets forth requirements that HCFA publish a notice for public comment in the *Federal Register* of any proposed changes in conditions of approval or reapproval and in system requirements for systems eligible for funding at 90 or 75 percent. Changes might include requiring State agencies to revise an existing subsystem to add data or functional capabilities, to use a standard code or data format, or

to meet additional or revised performance standards or elements. Under § 433.123 we must publish our response to the comments received on any proposed changes as well as the final decision regarding those changes in the *Federal Register*. In addition, we must publish in final requirement in the State Medicaid Manual and allow an appropriate time period for the State agencies to comply with the new requirements.

C. State Action Plan for Pursuit of Claims Utilizing MMIS

1. COBRA

Section 9503(a) (1) of COBRA amended section 1901(a)(25) of the Act to set forth certain State plan requirements with respect to responsible measures to be taken by a State to ascertain the legal liability of third parties to pay for care and services available under the plan. New section 1902(a)(25)(A)(ii) requires that a State plan provide that a State submit a plan to the Secretary (subject to the Secretary's approval) for pursuing claims against third parties, and that this plan be integrated with the State's MMIS. The legislation goes on to state that the plan will: (1) Be monitored as part of the Secretary's review of MMIS authorized under section 1903(r)(4) of the Act; and (2) be subject to FFP reductions for failure to meet conditions of reapproval. Finally, the plan (herein referred to as "action plan" so as not to be confused with the State plan) must not be subject to any other financial penalty as a result of any other monitoring, quality control, or auditing activities. (Further, section 9503(b) amended section 1903(r)(6)(J) of the Social Security Act to require the Secretary to develop performance standards with respect to the pursuit of third party collections as it relates to the action plan developed by the State. This will be discussed more fully under section II.D.)

2. Provisions of the Regulations

We are proposing to implement the requirements described in section II.C.1. (with the exception of the prohibition of any other financial penalty—see section II.E.) by amending § 433.138 of the regulations.

As discussed earlier in section I.C.2., we published on February 27, 1987, a final rule that, in part, amended § 433.138 to set forth certain minimum requirements for activities a State must perform as part of its third party liability program. In that rule, we revised the language contained in the then existing § 433.138 and designated it as paragraph

(a) and also added new paragraphs (b) through (j) setting forth those minimum requirements.

Therefore, with this in mind, we are proposing in this document to implement the COBRA requirements discussed in section II.C.1. regarding the development of an action plan by States, by adopting the same language contained in paragraph (a) of the February 27 final rule and now adding a new paragraph (k). The new paragraph (k) would require that if a State has an MMIS approved by HCFA under Part 433, Subpart C, the agency must provide, as part of its State plan, that it will submit to the HCFA regional office within 90 days (that is, 90 days from the publication of the final rule following this NPRM) an "action plan" that describes how it will utilize its MMIS for pursuing claims against third parties. (Of course, if a State does not have an approved MMIS system the requirements contained in paragraph (k) would not apply to that State.) The action plan would be subject to regional office approval and must be consistent with the conditions for reapproval set forth in § 433.119 of the MMIS regulations. (One of those conditions is that the system meet the performance standards for reapproval and the systems requirements in Part 11 of the State Medicaid Manual, as periodically amended.) Further, the implementation of the action plan would be monitored as part of the Secretary's review of the MMIS and would be subject to FFP reduction in accordance with procedures for FFP reduction set forth in § 433.120 of MMIS regulations.

With respect to a State action plan, we chose to provide for a specific time limit for its submittal to the regional office of 90 days from the date of the publication of the final rule following this NPRM because the action plan that States would be required to develop under the new § 433.138(k) must be consistent with conditions set forth for reapproval of a State's MMIS. As we indicated, some of those conditions are systems requirements and proposed performance standards that we plan to publish in this NPRM and in our final rule. We believe that 90 days is sufficient time for States to develop their action plans based on the information that will be published in the final rule. The HCFA Regional Office will review a State's action plan and notify the State of its determination as to approval within 30 days of receipt of the action plan.

We are proposing that States develop their action plans to be consistent with the conditions for MMIS reapproval set

forth in § 433.119. The action plan for pursuing TPL claims must be integrated with the operation of the State's mechanized claims processing and information retrieval system. The plan must describe the actions and methodologies the State will follow in: (1) Identifying third parties; for example, the collection of TPL information during the eligibility determination and redetermination for medical assistance, diagnosis and trauma code edits, data exchanges with various entities such as State Wage Information Collection Agencies, SSA Wage and Earnings Files, State Title IV-A agencies, and State Workers' Compensation or Industrial Accident Commissions or Motor Vehicle Departments; (2) determining the liability of third parties; i.e., instituting followup procedures (if appropriate) to ensure the legal liability of the third party; (3) avoiding payment of third party claims as prescribed in regulations located at 42 CFR 433.139; (4) recovering third party liability after Medicaid payment; and (5) recording and tracking such information and actions.

Finally, we interpreted the statute to mean, and included in our regulations, that the monitoring of State developed action plans and FFP reductions relate to review for reapproval of MMIS and not any other approval reviews since the monitoring of the action plan referred to in section 9503 of COBRA refers to monitoring activities under section 1904(r)(4) of the Act which section addresses monitoring of systems already approved.

D. Requirement to Develop Performance Standards

1. COBRA

Section 9503(b)(1) of COBRA amends section 1903(r)(6)(J) of the Act (dealing with State MMIS systems) to now require the Secretary to develop performance standards for assessing States' third party collection efforts in accordance with section 1902(a)(25)(A)(ii) of the Act (the section dealing with State developed action plans). We therefore, interpret this to mean that the performance standards must relate directly to the action plans States must develop, which plans must describe how the State will utilize the MMIS to pursue third party collections.

2. Current Requirements in the Regulations for Proposing Changes in State Requirements Regarding MMIS

As discussed earlier in this document, whenever HCFA makes certain changes with regard to conditions for approval or reapproval, HCFA under § 433.123 must publish a notice in the **Federal Register**

proposing these changes, respond to the comments received, publish final requirements in the State Medicaid Manual, and allow appropriate time for State agencies to comply with the new requirements.

We would normally publish these changes in a separate notice, but because these proposed changes are so integrally related to the action plans required under section 1902(a)(25)(A)(ii) of the Act, we are proposing the changes in this document. We believe this meets fully the intent of § 433.123 that agencies be properly notified of changes that they are responsible to implement as part of their MMIS.

3. Proposed Performance Standard

Set forth below is our proposed performance standard (which will be used in addition to the other conditions set forth in § 433.119 for reapproval of State systems) for evaluating State action plans, and the elements by which we will assess adherence to the standard.

a. Performance standard and elements. Standard 8—Third Party Liability An efficient and effective mechanized claims processing and information retrieval system capable of receiving, controlling and utilizing claims and third party liability data and accounting for dollar amounts to assure that the Title XIX (Medicaid) program is the payor of last resort must be provided.

Element P—The State must collect, identify and input third party resource data into the mechanized claims processing information retrieval system.

Element Q—The system must accurately utilize third party resource data to cost avoid claims when appropriate and the system must accurately account for the number of claims and the dollar amounts that have been cost avoided and any remaining dollar amounts that are paid by the Medicaid agency. The system must accurately account for claims resubmitted for payment by the agency and the dollar amounts paid by the agency for those claims.

Element R—The system must accurately utilize third party resource data to seek recovery of reimbursement when appropriate and the system must accurately account for the number of claims and dollar amounts that are estimated to be potentially recoverable and dollar amounts that are actually recovered.

Element S—The State must have an accurate and current set of administrative guidelines and procedures including management and administrative reports in place to assure

that third party resources are identified and pursued whenever possible and to assure that the Medicaid program is the payor of last resort.

b. Effective date for performance standard and elements. Under section 1903(r) of the Act, we are required to inform the States of conditions of reapproval at least three months before the beginning of the review period in which the procedures, standards and other conditions will be used. Although we might publish changes in performance standards several times during the year, they would not be effective until the next fiscal year's review and then only if they are published at least three months before the fiscal year begins. Based on this policy, the performance standard set forth above would become effective October 1, 1987. These standards, under the authority of § 433.119, will be utilized in the system reapproval process and will be used to monitor State action plans developed under § 433.138(k).

4. Systems Requirements

a. General. The following system requirements, relating to State third party liability efforts, are not new. They have been in effect in more general terms and are already contained in Part 11 of the State Medicaid Manual, Chapter 3, sections 11315F and 11325E and G for all systems approved under 42 CFR Part 433, Subpart C. Since these system requirements are so integrally related to the action plans required under section 1902(a)(25)(A)(ii) of the Act, we are taking this opportunity to set forth the requirements already set out in Part 11 of the State Medicaid Manual and restate them to assist States in developing their action plans.

b. System requirements.

System Requirement 1

The system must have the capability to receive and maintain identification of third party resources from all sources.

System Requirement 2

The system must have the capability to identify, control and accurately account for the number of claims that must be cost avoided and to maintain identification of dollar amounts that are cost avoided and remaining dollar amounts that are paid by the Medicaid agency for such claims. The system must identify and control claims that are resubmitted for payment by the agency.

System Requirement 3

The system must have the capability to identify and control and accurately

account for the number of claims for which the agency must seek recovery of reimbursement and must have the capability to maintain identification of associated dollar amounts representing the agency's estimate of potentially recoverable amounts and also actual recovered amounts.

E. Prohibition Against Financial Penalties Beyond Those Under MMIS

1. General

As mentioned in section II.C.1., section 9503(a)(1) of COBRA amended section 1902(a)(25) of the Act to specifically prohibit a State from being subject to any other penalty with regard to its developed action plan that integrates its third party collection efforts with its MMIS beyond that financial penalty related to a State's MMIS review for reapproval. The prohibition encompasses any financial penalty as a result of any other monitoring, quality control, or auditing requirements.

2. Penalties for Monitoring or Quality Control Activities

Regulations located at 42 CFR Part 431, Subpart P establish State plan requirements for a Medicaid quality control system designed to reduce erroneous expenditures by monitoring eligibility determinations, third party liability activities, and claims processing. We are not proposing to amend these regulations to prohibit financial penalties for any errors found in third party liability activities as a result of quality control or monitoring endeavors.

We are adopting this position because regulations are currently in process to remove the quality control systems requirement applicable to performing TPL reviews that are currently contained under Part 431, Subpart P. Of course, if these regulations are not finalized in the form proposed, we would have to make amendments to Subpart P at a future date.

3. Penalties for Auditing Activities

Although we are in the process of removing the requirements for the monitoring and quality control activities just discussed, our interest in TPL activities has not diminished. We are merely changing the focus of Medicaid TPL oversight. We had proposed in the preamble to an August 9, 1983 NPRM (48 FR 36151) to conduct comprehensive Federal assessments in selected States instead of the requirement in regulations that all States perform TPL monitoring and quality control reviews. We intended to couple this oversight with

aggressive operational improvements and regulation changes to specify effective procedures for TPL identification, data matching and use of TPL information. In addition, we plan to notify States of model TPL practices that we have identified, focusing on the potential for substantial Medicaid savings and suggesting opportunities for States to establish cost effective TPL practices. States may, if they choose, continue their TPL quality control program or another case review system, and the administrative expenditures for such programs will be eligible for FFP in accordance with 42 CFR 433.15. We will no longer require the activities, however, as a part of State plan requirements relating to quality control systems.

States' action plans (as set forth under our proposed § 433.138(k)) will be monitored under the MMIS program review for reapproval of systems and FFP reductions would apply for failure to meet the requirements for reapproval. Also, section 1902(a)(25)(A)(ii)(II), as amended by COBRA, prohibits a State from being subject to any other penalty with regard to its developed action plan beyond that financial penalty related to the State's MMIS review for reapproval.

We have carefully studied this issue as it relates to our ability to continue audit activities of State TPL programs and have concluded that we will use the MMIS review for reapproval to enforce the requirement that States integrate their TPL action plan into their MMIS. We may continue to conduct additional targeted TPL reviews to identify areas in which the operations can be improved and to measure the effectiveness of the TPL program.

III. Exceptions to the Cost Avoidance Method of Payment in Third Party Liability Situations

A. Background

As mentioned earlier in section I.C.1., the regulations governing payment of Medicaid claims that involve third party liability are located at 42 CFR 433.139. (The statutory authority for these regulations is found under section 1902(a)(25) and section 1903(o) of the Act.) Section 433.139, as amended by final regulations published on November 12, 1985 and on May 2, 1986, requires agencies to cost avoid (that is, the agency pays claims involving third party liability only to the extent the agency's payment schedule amount exceeds the amount paid by the third party) unless a waiver is requested by the State and approved by HCFA under § 433.139(e)(1).

B. COBRA

Section 9503(a)(1) of COBRA amended section 1902(a)(25) of the Act in part by adding new paragraphs 1902(a)(25)(E) and 1902(a)(25)(F). These paragraphs set forth certain requirements that a State must provide for as part of its State plan. Essentially, the new provisions enacted by section 9503(a)(1) provide for specific exceptions to the cost avoidance method of payment that a State would be required to use unless a waiver is approved (see § 433.139(b)). The exceptions to the cost avoidance method apply to (1) claims for covered services under the plan for prenatal care for pregnant women, preventive pediatric services (including early and periodic screening, diagnosis and treatment (EPSDT) services); and (2) claims for services covered under the plan that are provided to an individual for whom child support enforcement services is being carried out under part D of Title IV of the Act, if the third party liability is derived from a parent whose obligation to pay support is being enforced by the title IV-D agency, and for whom the provider furnishing services to the individual has not received payment from a legally liable third party within 30 days after the service was furnished.

C. Provisions of the Regulations

To implement section 1902(a)(25)(E) and (F), we are proposing to amend § 433.139 of the regulations. Section 433.139(b)(1) currently requires a State to use the cost avoidance method of payment of claims when a third party resource is involved unless a waiver is approved by HCFA to use the "pay and chase" method described in paragraph (b)(2) of that section. We are proposing to add a new paragraph (b)(3) to provide for the two exceptions to the cost avoidance method that we just described in the previous section III.B. In addition, we are proposing additional provider requirements to the exception regarding child support enforcement under title IV-D of the Act. These requirements are: (1) The provider furnishing the service must identify the third party and certify that the third party has been billed for reimbursement; (2) the provider furnishing the service must certify that 30 days have elapsed since the date of service and payment has not been received from the third party; and (3) the provider must acknowledge the Medicaid payment as payment in full. The requirements are meant to deter duplicative payments to providers as a result of the provider billing both Medicaid and the liable

third party. Also, these requirements will ensure the States' right to payment from a liable third party under the assignment of rights provision under DEFRA (section 2387). We would also include conforming language to the introductory material under paragraph (b) that would recognize the exceptions to the cost avoidance method that we set forth in paragraph (b)(3).

IV. Third Party Liability and Certain Provider Restrictions

A. COBRA

Section 9503 of COBRA, in part, restricts providers from seeking to collect certain payment amounts from individuals eligible for services covered under the State plan where one or more third parties is liable for payment. It also permits a State to impose a reduction in payments to providers that violate those restrictions. The specific amendments with regard to provider restrictions follow.

1. Provider Restrictions—State Plan Requirements

a. *Collection of certain payment amounts.* Section 9503(a)(1) of COBRA amended section 1902(a)(25) of the Act. The new section 1902(a)(25)(C) requires the State plan to provide that if a provider furnishes covered services under the plan to a Medicaid recipient and there is a liable third party to pay for, at a minimum, all amounts payable under the plan for those services (that is, the amount payable under the plan by the agency plus any cost-sharing payments to be paid by the recipient) the provider may not seek to collect any payment amounts from the recipient. Neither may the provider seek payment from any financially responsible relative or representative of the recipient. (Henceforth, when we refer to seeking collection of payment amounts from a recipient, these other individuals should also be inferred.)

Section 1902(a)(25)(C), as added by section 9503 of COBRA, goes on to state that the State plan must provide that if a provider furnishes covered services to a recipient and there is a liable third party, but the third party is not liable to pay for all amounts due under the plan (that is, the amount payable under the plan by the agency plus any recipient cost-sharing payments) the provider may not seek to collect a payment that exceeds the lesser of: (1) Any cost-sharing amount the recipient would have been required to pay under Medicaid in the absence of third party liability; or (2) the difference between the amount of third party liability and the amount payable under the plan.

b. *Restrictions against refusing to furnish covered services to recipients.* Section 9503(a)(1) of COBRA amended section 1902(a)(25). A new section 1902(a)(25)(D) requires the State plan to provide that a provider who furnishes services and is participating under the plan may not refuse to furnish covered services under the plan to an eligible Medicaid recipient on account of a third party's potential liability for the service.

2. Reduction of Payments to Providers

Section 9503(a)(2) of COBRA amended section 1902 of the Act by adding a new paragraph (g) to provide for a reduction of payment amounts otherwise due to a provider if that provider seeks to collect amounts restricted from being collected under section 1902(a)(25)(C) of the Act. The reduction may be up to three times the amount the provider sought to collect in violation of section 1902(a)(25)(C). Also, this reduction of payment would be permitted in addition to any other sanction available to the State for such an action by the provider.

B. Provisions of the Regulations

To implement the provisions just discussed, we are proposing to amend Part 447, Subpart A of the regulations by adding two new sections. The new § 447.20 would set forth the State plan requirements relating to the provider restrictions regarding provider collection of certain payment amounts (§ 447.20(a)) and the restriction against providers refusing to furnish covered services to Medicaid recipients (§ 447.20(b)). For the aid of the reader, an example follows that describes how § 447.20(a) would be applied in a hypothetical situation.

• *Possible Hypothetical Example Situation:* Provider's charge for a covered service is \$100. The total amount for the service payable under the Medicaid State plan is \$90. This includes the full amount allowed under the agency's payment schedule (i.e., \$85) plus the cost-sharing amount for which the recipient is responsible (i.e., \$5).

(1) If a third party or parties is liable for \$90 or more, no payment may be sought by the provider from the recipient.

(2) If third party liability is \$70, the provider may seek to collect from the recipient \$5. (That is, the lesser of what the recipient would be responsible for in the absence of third party liability (\$5) or the difference between the third party liability and the total amount payable under the plan (\$90—\$70=\$20)). In this case, as always, the provider may submit a claim to the Medicaid Agency for payment of \$15 by the Medicaid agency; that is the difference between

the third party payment of \$70 and the \$85 amount allowed under the agency's payment schedule.

(3) If third party liability is \$86, the provider may seek to collect from the recipient only \$4. (That is, the lesser of what the recipient would be responsible for in the absence of third party liability (\$5) or the difference between the third party liability and the total amount payable under the plan (\$90—\$86=\$4).

A new § 447.21 would be established to provide for reduction of payments to providers that seek to collect from a recipient amounts that exceed that permitted under the new § 447.20(a); would also set forth the amount of payment reduction to the provider the Medicaid agency may impose for such a provider violation, and would require that the State be required to include, as part of its State plan, a description of its policy regarding the reduction in payment amounts that the agency may impose under § 447.21.

C. Issues

In developing these two new sections of the regulations, we had two issues to consider.

1. Interpretation of Key Phrase

One issue involved the interpretation of the phrase under the new 1902(a)(25)(C), "... the amount payable for that service under the plan (disregarding section 1916) ...". We interpreted this phrase to mean the total amount payable under the plan with respect to a covered service furnished to a recipient, including the amount payable by the agency and, if applicable, cost-sharing amounts by the recipient. This is consistent with current regulations at § 447.15. This section requires provider acceptance of the State payment as payment in full. This section explains that a State plan must provide that the Medicaid agency must limit participation in the Medicaid program to providers that accept, as payment in full, the amounts paid by the agency plus any deductible, coinsurance, or copayment required by the plan to be paid by the individual for services furnished.

With respect to the parenthetical "(disregarding section 1916)", section 1916 of the Act provides for payment of enrollment fees, premiums, or similar charges and then also to deductions, cost-sharing or similar charges. For purposes of section 1902(a)(25)(C) of the Act and §§ 447.20 and 447.21 of the regulations, we are interpreting the application of section 1916 to be limited only to deductibles, coinsurance, copayments or similar cost-sharing

charges as set forth under §§ 447.53 through 447.56 and not to enrollment fees, premiums, or similar charges as set forth under §§ 447.51 to 447.52). We believe this is the more reasonable interpretation of the meaning of section 1916 as used in section 1902(a)(25)(C) of the Act because, first, section 1902(a)(25)(C) relates to restrictions on amounts that a provider may seek to collect from recipients for services furnished by the provider. Current regulations at § 447.15 require the Medicaid agency to limit participation in the Medicaid program to providers that accept, as payment in full, the amounts paid by the agency plus any deductible, coinsurance, or copayment required by the plan to be paid by the individual for services furnished. On the other hand, enrollment fees, premiums, etc. or similar charges refer to amounts set by the Medicaid agency for coverage of services by a third party. This interpretation is also supported by the following language contained in the Senate Report (Sen. Rep. No. 146, 99th Cong. 1st Sess. pp. 312-313 (1985)).

This provision clarifies the responsibility of Medicaid recipients for co-payments and deductibles when third parties are liable for payments on their behalf.

2. Reduction of Payments to Providers

As discussed earlier, proposed § 447.21 provides for a reduction of payments to providers that seek to collect from a recipient payment in excess of a certain amount. That section also provides a maximum reduction in payment that the agency may impose. For purposes of this section, we are proposing to allow States flexibility as to whether or not the agency imposes a reduction on any payment due a provider that violates the restriction. If the agency does impose a reduction, it may decide when the reduction will be made and up to what amount (not to exceed the maximum provider for under regulations). We believe this is in accordance with section 1902(g) of the Act, which provides that a State *may* provide for a reduction, not *must* provide for one. However, as discussed earlier, the State would be required to describe, as part of its State plan, its policy regarding reductions of payments to providers.

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any major rule. A major rule is defined as any document that is likely to: (1) Have an annual effect on the economy of \$100 million or more, (2)

cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The regulation changes we are making in this proposed rule will neither result in an annual economic impact of \$100 million or more nor meet any other criterion of the Executive Order. We have determined that this rule is not a major rule Executive Order 12291 and that a regulatory impact analysis is not required.

B. Regulatory Flexibility Act.

We prepare and publish a regulatory flexibility analysis consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) for regulations unless the Secretary certifies that the regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities.

Under the RFA we do not consider either States or individuals to be small entities. Also, we do not believe that the effects on providers of services are either estimable or significant. Therefore, we have determined, and the Secretary certifies, that these proposed regulations will not result in a significant economic impact on a substantial number of small entities.

VI. Information Collection Requirements

Sections 433.138(k), 433.139(b)(3)(ii) and 447.21(a) contain information collection requirements that are subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980. A notice will be published in the *Federal Register* when approval is obtained. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the preamble and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: Allison Herron.

VII. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments that we receive by the date and time

specified in the "Dates" section of this preamble, and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 433

Administrative practice and procedure, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs—health, Health facilities. Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Chapter IV, Subchapter C would be amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

* * *

Subchapter C—Medical Assistance Programs

* * *

PART 433—STATE FISCAL ADMINISTRATION

The authority Citation for Part 433 continues to read as follows:

Authority: Secs. 1102, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), and 1912 of the Social Security Act; 42 U.S.C. 1302, 1396a(a)(4), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r), and 1396K unless otherwise noted.

A. Part 433, Subpart D, would be amended as set forth below:

1. In § 433.138, paragraph (a) is revised and a new paragraph (k) is added to read as follows:

§ 433.138 Determining liability of third parties.

(a) *Basic provisions.* The agency must take reasonable measures to determine the legal liability of third parties to pay for services furnished under the plan. At a minimum, such measures must include the requirements specified in paragraphs (b) through (k) of this section.

* * *

(k) *Integration with the State mechanized claims processing and information retrieval system. Basic requirement—Development of an action plan.* (1) If a State has a mechanized claims processing and information retrieval system approved by HCFA

under Part 433, Subpart C, the agency must submit, by [90 days from date of publication of final rule], to the HCFA regional office an action plan, subject to approval by the regional office.

(2) The action plan for pursuing third party liability claims must be integrated with the operation of the State's mechanized claims processing and information retrieval system and must describe the actions and methodologies the State will follow in—

- (i) Identifying third parties;
- (ii) Determining the liability of third parties;
- (iii) Avoiding payment of third party claims as required in § 433.139;
- (iv) Recovering reimbursement from third parties after Medicaid claims payment as required in § 433.139; and,
- (v) Recording and tracking such information and actions.

(3) The action plan must be consistent with the conditions for reapproval set forth in § 433.119; will be monitored in accordance with those conditions; and if the conditions are not met will be subject to FFP reduction in accordance with procedures set forth in § 433.120 and not subject to any other penalty as a result of any other monitoring, quality control, or auditing requirements.

2. Section 433.139 is amended by revising the introductory text to paragraph (b) and by adding a new paragraph (b)(3) to read as follows:

§ 433.139 Payment of claims.

(b) *Probable liability is established at the time claim is filed.* Unless the agency has received approval to use an alternative method of payment as specified under paragraph (b)(2) of this section or is required to use the method for paying claims for the situations described in paragraph (b)(3) of this section, the agency must pay claims involving probable third party liability as follows: * * *

(3) The agency must pay the full amount allowed under the agency's payment schedule for the claim and seek reimbursement from any liable third party to the limit of legal liability (and for purposes of paragraph (b)(3)(ii) of this section, from a third party, if the third party liability is derived from an absent parent whose obligation to pay support is being enforced by the State title IV-D agency), consistent with paragraph (f) of this section, if:

(i) The claim is for prenatal care for pregnant women, or preventive pediatric services (including early and periodic screening, diagnosis and treatment services provided for under Part 441, Subpart B) that is covered under the plan; or

(ii) The claim is for a service covered under the plan that is provided to an individual on whose behalf child support enforcement is being carried out by the State title IV-D agency. The agency prior to making any payment under (b)(3)(ii) must assure that the following requirements are met:

(A) The provider furnishing the service to the individual identifies the third party, and certifies that—(1) The third party has been billed for reimbursement; and (2) The provider furnishing the service to the individual has not received payment for that service from the third party within 30 days after the service was furnished.

(B) The provider acknowledges the Medicaid payment as payment in full.

PART 447—PAYMENTS FOR SERVICES

The authority citation for Part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302) unless otherwise noted.

B. Part 447, Subpart A would be amended as set forth below:

1. A new § 447.20 is added to read as follows:

§ 447.20 Provider restrictions—State plan requirements.

A State plan must provide that—

(a) In the case of an individual who is eligible for medical assistance under the plan with respect to a service for which a third party or parties is liable for payment:

(1) If the total amount of the established liability of the third party or parties for the service is equal to or greater than the amount payable under the State plan (which includes, where applicable, cost-sharing payments provided for in §§ 447.53 through 447.56), the provider furnishing the service to the individual may not seek to collect from the individual (or any financially responsible relative or representative of that individual) any payment amount for that service.

(2) If the total amount of the established liability of the third party or parties for the service is less than the amount payable under the State plan (including cost sharing payments set forth in §§ 447.53 through 447.56), the provider furnishing the service to the individual may collect from the individual (or any financially responsible relative or representative of that individual) an amount which is the lesser of:

(i) Any cost-sharing payment amount imposed upon the individual under §§ 447.53 through 447.56; or

(ii) An amount which represents the difference between the amount payable under the State plan (which includes, where applicable, cost-sharing payments provided for in §§ 447.53 through 447.56) and the total of the established third party liability for the services.

(b) A provider must not refuse to furnish services covered under the plan to an individual who is eligible for medical assistance under the plan on account of a third party's potential liability for the service(s).

2. A new § 447.21 is added to read as follows:

§ 447.21 Reduction of payments to providers.

(a) A state plan must provide that the State describe, as part of its State plan, its policy regarding the reduction of payments to providers permitted under paragraph (b) of this section.

(b) If a provider seeks to collect from an individual (or any financially responsible relative or representative of that individual) an amount that exceeds an amount specified under § 447.20(a)—

(1) The Medicaid agency, in addition to any other sanction available to the agency, may provide for the reduction of any payment amount otherwise due to the provider; and

(2) The reduction may be equal to up to three times the amount that the provider sought to collect in violation of § 447.20(a).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: July 10, 1986.

William L. Roper,
Administrator, Health Care Financing Administration.

Approved: October 29, 1986.

Otis R. Bowen,
Secretary.

[FR Doc. 87-4314 Filed 3-2-87; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Withdrawal of Fishery Management Plan Amendment

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment; withdrawal.

SUMMARY: NOAA issues this notice withdrawing the notice of availability of Amendment 2 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources that was published February 18, 1987, 52 FR 4924.

Amendment 2 is being withdrawn based upon a preliminary determination that it is not consistent with the national standards of the Magnuson Act. The amendment is being reevaluated by the Gulf of Mexico Fishery Management Council and the South Atlantic Fishery Management Council. If it is resubmitted another notice of availability will be published.

FOR FURTHER INFORMATION CONTACT: William N. Lindall (Regional Plan Coordinator), 813-893-3722.

Dated: February 25, 1987.

James E. Douglas, Jr.,
Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

[FR Doc. 87-4377 Filed 3-2-87; 8:45 am]

BILLING CODE 3510-22

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead National Forest, Flathead County, MT; Intent to Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to protect genetic evaluation tree plantations and tree seed orchards from damaging agents such as insects, rodents, diseases, and weedy vegetation in the Bigfork Tree Improvement Area (50 acres in size), located on the Swan Lake Ranger District on the Flathead National Forest.

A range of alternatives will be considered including the use of pesticides to control damaging agents. A no action alternative will also be considered.

Federal, State, and local agencies, along with individuals and/or organizations who may be interested in or affected by the decision, will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of the insignificant issues.
4. Determination of potential cooperating agencies and assignment of responsibilities.

Edgar B. Brannon, Jr., Forest Supervisor, Flathead National Forest, Kalispell, Montana, is the responsible official.

The analysis is expected to take about 3 months. The draft environmental impact statement should be available for public review by May 1987, the final environmental impact statement is scheduled to be completed by July 1987.

Written comments and suggestions concerning the analysis should be sent to Forest Supervisor, Flathead National

Forest, P.O. Box 147, Kalispell, Montana 59901 by April 30, 1987.

Questions about the proposed action and environmental impact statement should be directed to Jim VanDenburg, Silviculturist, or Warren Roberts, Zone Tree Improvement Specialist, Flathead National Forest Supervisor's Office, phone number (406)-755-5401.

Dated: February 20, 1987.

Edgar B. Brannon, Jr.,

Forest Supervisor.

[FR Doc. 87-4339 Filed 3-2-87; 8:45 am]

BILLING CODE 3410-11-M

National Agricultural Statistics Service

Changes in Citrus Forecasts Program for 1987-88 Season

Notice is hereby given that the National Agricultural Statistics Service (NASS) will make changes in the estimates program for citrus fruit production forecasts. The citrus crop forecasts will remain on a September-July schedule, as previously published in the Agricultural Statistics Board 1987 Releases catalog. For 1987-88, the season will begin September 1, 1987, and continue monthly through July 1, 1988. All official estimates will be published by NASS in the *Crop Production* report. Preliminary end-of-season estimates will continue to be published in the September *Crop Production* report and the *Citrus Fruits Annual Summary* which will also be issued in September.

Changes in the estimates program are as follows:

1. Arizona will discontinue forecasts for all citrus crops, including lemons, oranges, grapefruit, and tangerines, during the months of November, December, February, March, May, and June.
2. California will discontinue forecasts for lemons, grapefruit, and tangerines, during the months of December, February, March, May, and June. Forecasts for grapefruit and tangerines during November will also be dropped.

Changes in the forecast schedule affect only the citrus States of Arizona and California. No changes are being made in either Florida or Texas. Industry groups, growers, and shippers in the States of Arizona and California have requested less frequent survey contact to minimize reporting burden.

Federal Register

Vol. 52, No. 41

Tuesday, March 3, 1987

Questions about this action should be sent to Richard D. Allen, Director, Estimates Division, NASS/USDA, Room 5847-S, Washington, DC 20250-2000; telephone: (202) 447-3896.

Dated: February 26, 1987.

W.E. Kibler,

Administrator.

[FR Doc. 87-4365 Filed 3-2-87; 8:45 am]

BILLING CODE 3410-20-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Advisory Committee (CAC) of the American Economic Association (AEA), the CAC of the American Marketing Association (AMA), the CAC of the American Statistical Association (ASA), and the CAC on Population Statistics; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of a joint meeting followed by separate and jointly held (described below) meetings of the CAC of the AEA, CAC of the AMA, CAC of the ASA, and CAC on Population Statistics. The joint meeting will convene on April 9, 1987 at the Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209.

The CAC of the AEA is composed of nine members appointed by the President of the AEA. It advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning economic surveys and censuses; reviews major aspects of the Census Bureau's programs; and advises on the role of analysis within the Census Bureau.

The CAC of the AMA is composed of nine members appointed by the President of the AMA. It advises the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The CAC of the ASA is composed of 12 members appointed by the President of the ASA. It advises the Director, Bureau of the Census, on the Census Bureau's programs as a whole and on their various parts, considers priority issues in the planning of censuses and surveys, examines guiding principles, advises on questions of policy and

procedures, and responds to Census Bureau requests for opinions concerning its operations.

The CAC on Population Statistics is composed of four members appointed by the Secretary of Commerce and five members appointed by the President of the Population Association of America from the membership of that Association. The CAC on Population Statistics advises the Director, Bureau of the Census, on current programs and on plans for the decennial census of population.

The agenda for the April 9 combined meeting that will begin at 8:45 a.m. and end at 10:15 a.m. is: (1) Introductory remarks by the Director, Bureau of the Census; (2) 1990 census promotional update; (3) 1990 census planning update; and (4) overview of Census Bureau international programs.

The agendas for the four committees in their separate and jointly held meetings that will begin at 10:30 a.m. and adjourn at 5:30 p.m. on April 9 are as follows:

The CAC of the AEA: (1) Update on 1987 Economic Censuses (joint with CAC of the AMA), (2) Census Bureau response to recommendations and activities of special interest to the CAC of the AEA, (3) Standard Industrial Classification (SIC)—development of plans for the future (joint with CAC of the AMA), and (4) transportation statistics overview and commodity transportation—a carrier approach (joint with CAC of the AMA).

The CAC of the AMA: (1) Update on 1987 Economic Census (joint with CAC of the AEA), (2) Census Bureau response to recommendations and activities of special interest to the CAC of the AMA, (3) SIC—development of plans for the future (joint with CAC of the AEA), and (4) transportation statistics overview and commodity transportation—a carrier approach (joint with CAC of the AEA).

The CAC of the ASA: (1) Overview of SIC revision, (2) Census Bureau response to recommendations and activities of special interest to the CAC of the ASA, and (3) 1990 census adjustment issues (joint with CAC on Population Statistics).

The CAC on Population Statistics: (1) Status of migration data and research, (2) Census Bureau response to recommendations and activities of special interest to the CAC on Population Statistics, and (3) 1990 census adjustment issues (joint with CAC of the ASA).

The agendas for the April 10 meetings that will begin at 8:45 a.m. and adjourn at 1 p.m. are:

The CAC of the AEA: (1) Center for economic studies—status and plans for the future, (2) development of new ways of disseminating data to states (joint with CAC of the AMA), (3) comments by outside observers, (4) development and discussion of recommendations, and (5) closing session including (a) continued committee and staff discussions and (b) plans and suggested agenda for the next meeting.

The CAC of the AMA: (1) Advertising plans for the 1987 Economic Censuses, (2) development of new ways of disseminating data to states (joint with CAC of the AEA), (3) comments by outside observers, (4) development and discussion of recommendations, and (5) closing session including (a) continued committee and staff discussions and (b) plans and suggested agenda for the next meeting.

The CAC of the ASA: (1) 1990 census adjustment issues (joint with CAC on Population Statistics), (2) comments by outside observers, (3) development and discussion of recommendations, and (4) closing session including (a) continued committee and staff discussions and (b) plans and suggested agenda for the next meeting.

The CAC on Population Statistics: (1) 1990 census adjustment issues (joint with CAC of the ASA), (2) comments by outside observers, (3) development and discussion of recommendations, and (4) closing session including (a) continued committee and staff discussions and (b) plans and suggested agenda for the next meeting.

All meetings are open to the public, and a brief period is set aside on April 10 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer at least 3 days before the meeting.

Persons wishing additional information concerning these meetings or who wish to submit written statements may contact the Committee Liaison Officer, Mrs. Phyllis Van Tassel, Room 2428, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, DC 20233). Telephone: (301) 763-5410.

Dated: February 25, 1987.

John G. Keane,
Director, Bureau of the Census.

[FR Doc. 87-4414 Filed 3-2-87; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-301-602 and A-223-602]

Certain Fresh Cut Flowers From Colombia and Costa Rica; Postponement of Final Antidumping Duty Determinations

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The final antidumping duty determinations involving certain fresh cut flowers from Colombia and Costa Rica are being postponed until not later than February 25, 1987.

EFFECTIVE DATE: March 3, 1987.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3965.

SUPPLEMENTARY INFORMATION:

On October 28, 1986, we made affirmative preliminary antidumping duty determinations that certain fresh cut flowers from Colombia and Costa Rica are being, or are likely to be, sold in the United States at less than fair value (Colombia: 51 FR 39887, November 3, 1986, Costa Rica: 51 FR 39890, November 3, 1986). The notices state that we would issue our final determinations by January 12, 1987.

On November 3, 1986, counsel for the respondents in both investigations requested that the Department extend the period for the final determination for 30 days, i.e., until not later than 105 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). On November 24, 1986, the extensions were granted (Colombia: 51 FR 43649, December 3, 1986, Costa Rica: 51 FR 43650, December 3, 1986).

On January 30, 1987, counsel for the respondents in the Colombian investigation requested that the Department extend the period for the final determination for eight additional days, i.e., until not later than 113 days after the date of publication of the preliminary determination, in accordance with 735(a)(2)(A) of the Act. On February 9, 1987, counsel for the respondents in the Costa Rican investigation also requested an extension of eight additional days. On February 17, 1987, the extensions were granted.

On February 20, 1987, counsel for the respondents in both investigations requested that the Department extend the period for the final determinations for one additional day, *i.e.*, until not later than 114 days after the date of publication of the preliminary determination in accordance with 735(a)(2)(A) of the Act. The respondents are exporters who account for a significant portion of the exports of the merchandise under investigation. If exporters who account for a significant portion of the exports of the merchandise under investigation properly request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, the period for the final determinations in these cases is hereby extended. We intend to issue the final determinations not later than February 25, 1987.

Scope of Investigation

The products covered by these investigations are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS), and standard carnations, standard and pompon chrysanthemums, alstroemeria, gerbera, and gypsophila, currently provided for in item 192.21 of the TSUS.

The United States International Trade Commission is being advised of these postponements in accordance with section 735(d) of the Act.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-4349 Filed 3-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-603]

Postponement of Final Antidumping Duty Determination; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Italy

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On February 13, 1987, we received a request from counsel for the respondent RIV-SKF Officine di Villar Perosa S.p.A. (RIV-SKF) in the antidumping duty investigation of tapered roller bearings and thereof, finished or unfinished (tapered roller bearings), from Italy that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff

Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of tapered roller bearings from Italy have occurred at less than fair value until not later than June 22, 1987. We are also postponing our public hearing from March 11, 1987 until May 14, 1987.

EFFECTIVE DATE: March 3, 1987.

FOR FURTHER INFORMATION CONTACT: Karen DiBenedetto, (202-377-1776) or Charles Wilson, (202-377-5288), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

On September 19, 1986, we published a notice in the *Federal Register* (51 FR 33285) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether tapered roller bearings from Italy are being, or are likely to be, sold at less than fair value. On October 2, 1986, the International Trade Commission determined that there is a reasonable indication that imports of tapered roller bearings from Italy are materially injuring a U.S. industry. On February 6, 1987, we published a preliminary determination of sales at less than fair value with respect to this merchandise (52 FR 3835). The notice stated that if the investigation proceeded normally, we would make our final determination by April 20, 1987.

On February 13, 1987, counsel for the respondent requested that we extend the period for the final determination until not later than the 135th day after publication of our preliminary determination, pursuant to section 735(a)(2)(A) of the Act. The respondent accounts for virtually all of the exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. We are postponing the date of the final determination until not later than June 22, 1987.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:30 p.m. on May 14, 1987, at the U.S. Department of

Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by May 7, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

The United States International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 25, 1987.

[FR Doc. 87-4352 Filed 3-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-601]

Final Determination of Sales at Less Than Fair Value; Certain Fresh Cut Flowers From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain fresh cut flowers from Mexico are being, or are likely to be, sold in the United States at less than fair value and have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of certain fresh cut flowers that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Continuation of Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: March 3, 1987.

FOR FURTHER INFORMATION CONTACT:

William Kane, Judith L. Nehring or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1786, (202) 377-1778 or (202) 377-5288.

SUPPLEMENTARY INFORMATION:**Final Determination**

We have determined that certain fresh cut flowers from Mexico are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). We made fair value comparisons on sales of the class or kind of merchandise to the United States by the respondents during the period of investigation, June 1, 1985 through May 31, 1986. Comparisons were based on United States price and foreign market value. Foreign market value was based on home market prices or constructed value.

We found no sales at less than fair value for Floremor. Therefore, we are excluding Floremor from this determination. The margins found for all companies investigated are listed in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On May 21, 1986, we received a petition in proper form filed by the Floral Trade Council of Davis, California. The petition was filed on behalf of the U.S. industry that grows certain fresh cut flowers. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Mexico are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

We determined that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on June 10, 1986 (51 FR 21948, June 17, 1986), and notified the ITC of our action. On July 7, 1986, the ITC determined that there is a reasonable indication that imports of certain fresh cut flowers from Mexico materially injure a U.S. industry (USITC Pub. No. 1887).

On July 16, 1986, we presented antidumping duty questionnaires to Florex; Visaflor; Floremor; Tzitzic

Tareta; Rancho Daisy; Rancho Alisitos; Rancho Mision el Descanso; Rancho Las Dos Palmas; and Las Flors de Mexico, who account for approximately 90% of all exports from Mexico of the subject merchandise to the United States. We requested responses to the balance of the questionnaires in 30 days. On July 29, 1986, we received responses to section A of our questionnaires from all companies except Las Flors de Mexico. On August 6, 1986, counsel for all respondents, with the exception of Las Flors de Mexico, requested an extension of the due date for the remaining sections of the questionnaires. The Department, on August 12, granted an extension to September 1, 1986. On August 18, we granted an additional extension to September 10, 1986.

On September 10, we received responses from Florex; Visaflor; Floremor; Tzitzic Tareta; Rancho Daisy and Rancho Alisitos. On September 15, we received a response from Rancho Mision el Descanso. We received no subsequent information from Rancho Las Dos Palmas or Las Flors de Mexico. On October 1, 7, and 15, we requested further information from Florex; Visaflor; Floremor; Tzitzic Tareta; Rancho Daisy; Rancho Alisitos and Rancho Mision el Descanso. From October 7-17, supplemental responses were received from those firms. On October 28, 1986, we made an affirmative preliminary determination (51 FR 39896, November 3, 1986).

As required by the Act, we afforded interested parties an opportunity to submit oral and written comments, and on December 16, 1986, a hearing was held to allow parties to address the issues arising in this investigation.

Pursuant to a request from respondents representing a significant proportion of the exported merchandise, on January 12, 1987, we granted a postponement of the final determination until not later than January 20, 1987 (52 FR 2133, January 19, 1987).

On January 20, 1987, at the request of respondents, we granted an additional postponement of the final determination until not later than January 27, 1987 (52 FR 3151, February 2, 1987).

On January 27, 1987, at the further request of respondents, we again postponed the final determination until not later than February 17, 1987 (52 FR 3152, February 2, 1987).

On February 2, 1987, in response to our request, Rancho Mision El Descanso submitted information which clarified its sales submission.

On February 17, 1987, at the request of respondents, we again postponed the final determination until not later than February 24, 1987.

Scope of Investigation

The products covered by this investigation are fresh cut standard carnations, standard chrysanthemums and pompon chrysanthemums, currently provided for in item 192.21 of the *Tariff Schedules of the United States*.

Fair Value Comparisons

In order to determine whether sales of the subject merchandise to the United States were made at less than fair value, we compared a weighted-average monthly price of U.S. sales with a foreign market value based on home market prices.

Section 620(a) of the Trade and Tariff Act of 1984 (19 U.S.C. 1677f-1) expanded the discretionary use of sampling and averaging by the Department to include the determination of United States price or foreign market value, so long as the average is representative of the transactions under investigation. A combination of factors persuaded us to average the prices charged for U.S. sales in this investigation.

In a situation, such as here, where there is a mass filing of petitions alleging the sale of the same products at less than fair value from a number of countries, the limited resources of the Department are severely taxed due to the statutory deadlines. Eight separate cases were filed, some of them covering up to seven types of flowers. At the time of the preliminary determinations, the Department was confronted with over 260,000 sales transactions in the United States of the fresh cut flowers from various countries under investigation. A decision to make fair value comparisons transaction-by-transaction would present an onerous, perhaps impossible, burden on the Department in terms of data collection, verification, and analysis. Consequently, the Department exercised its broad discretion to average United States price, as authorized by the 1984 amendment to the Act, in order to reduce the administrative burden and maximize efficient use of limited resources, without loss of reasonable fairness in the results. Another factor in our determination is the need for consistency in our treatment of all the cut flowers investigations. Although the number of transactions varies among the countries being investigated, uniform application of the averaging methodology ensures that all countries are treated on the same basis.

Moreover, because of the perishability of the product under investigation, we believe that averaging of the United States prices in this case contributes to a more fair and more representative

measure of fair value. Because of this perishability, sellers may be faced with the choice of accepting whatever return they can obtain on certain sales or destroying the merchandise. Unlike non-perishable products, sellers cannot withhold their flowers from the market until they can obtain a higher price.

Faced with investigating sales of a product that is perishable, the Department has three options. The first would be to disregard entirely the "end of the day" or "distress" sales that are taken in lieu of destroying the product. The second would be to perform a transaction-by-transaction comparison. Finally, the third approach would be to employ limited averaging of United States prices.

Under the first approach, the Department would ignore the end of the day sales on the basis that such sales are not representative of the sellers' behavior in the U.S. market. To do so, however, would completely overlook the fact that such sales do occur in the ordinary course of trade in this product. Moreover, any attempt to segregate end of the day sales from dumped sales would be fraught with difficulties. Therefore, we have rejected this approach.

Under the second alternative, the Department would perform a transaction-by-transaction comparison. As noted above, the administrative burden imposed by a transaction-by-transaction comparison in these cases would be overwhelming. Moreover, given the Department's practice of treating non-dumped sales as having zero margins, even where the margins would be negative, this approach would give disproportionate weight to the end of the day sales. In other words, a producer whose normal sales are at prices above fair value could be found to be dumping solely because of these end of the day transactions. Again, we note that these sales arise only because of the perishability of the products under investigation.

The final approach, limited averaging of United States prices, represents a balancing of the concerns raised by the other approaches. It does not ignore the fact that such end of the day sales occur in the ordinary trade of this product. Nor does it assign disproportionate weight to these sales.

Therefore, this comparison yields the most accurate basis for determining whether sales are at less than fair value and constitutes the most representative analysis of trading practices which involve perishable products.

Finally, we note that well before passage of the Trade and Tariff Act of 1984, the Department used its discretion

to employ nontraditional methodology when circumstances dictated. In *Certain Fresh Winter Vegetables From Mexico; Antidumping: Final Determination of Sales at Not Less Than Fair Value*, 45 FR 20512 (1980), we used economic sampling techniques involving averaging to determine U.S. price because of the wide fluctuations in price due to the perishability of the product, among other reasons. This decision was affirmed by the Court of International Trade in *Southwest Florida Winter Vegetable Growers Ass'n. v. United States*, 7 CIT 99, 584 F. Supp. 10 (1984). The court noted that the Department has "broad flexibility" in administering the antidumping law, which it employed "with reasonable basis in fact reflecting the unique characteristic of perishability in the produce industry." (7 CIT at 107-108.)

In cases where companies have failed to respond to our questionnaire, or where requested responses were deemed too deficient to be employed in our calculations, we have determined that it is appropriate to assign such companies the higher rate of either, (1) the rate calculated from information supplied in the petition, adjusted as appropriate to remedy obvious errors, or (2) the rate for the firm in Mexico with highest margin of all firms that supplied adequate responses.

We used "best information available" for Rancho Las Dos Palmas and Las Flors de Mexico because, despite the Department's repeated requests, these companies did not submit adequate responses to our antidumping duty questionnaires. We used best information available for Visaflor because the information provided by this company could not be verified. For these three companies, we used as best information available, the highest rate calculated for a responding company, Rancho Daisy, because it was greater than the rate calculated from information contained in the petition, as adjusted for obvious errors.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price for Florex, Floremor and, where appropriate, for Tzitzic Tareta, as the merchandise was sold to unrelated purchasers prior to importation into the United States. We calculated the purchase price based on the f.o.b., Mexico City, packed price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, and foreign brokerage and handling.

As provided in section 772(c) of the Act, we used the exporter's sales price, where appropriate, to represent the United States price for that merchandise sold to unrelated purchasers after importation into the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, air freight, U.S. inland freight, U.S. brokerage and handling, commissions, and credit expenses incurred for the sales.

Foreign Market Value

For purposes of this investigation, the Department looked at an extended period of investigation of 12 months in order to compensate for the seasonality of flower production and sales.

Because Mexico was determined to be a hyperinflationary economy for the review period June 1, 1985 to May 31, 1986, we calculated foreign market value based on weighted monthly average home market prices on monthly constructed values based on cost data submitted, to adjust for inflation and the seasonality of flower production and sales.

In accordance with section 773(a) of the Act, we calculated foreign market value based on packed prices to unrelated purchasers in the home market. We made deductions, where appropriate, for inland freight. When comparing foreign market value to U.S. exporter's sales price transactions we made deductions, where appropriate, for selling expenses in the home market as an offset to those incurred on U.S. sales, and for credit expenses. For U.S. purchase price sales, we made an adjustment under § 353.15 of the Commerce Regulations for differences in circumstances of sale for credit expenses in the United States and the home market.

For both purchase price and exporter's sales price comparison, we subtracted home market packing and added U.S. packing to foreign market value.

Constructed Value

The Department used a monthly constructed value based on the company's records, adjusted where necessary to reflect the full costs, for determining the constructed value. Since the cash-basis financial statements did not include all costs, certain costs (for example, depreciation), where appropriate, were added. Other items recorded on the books (i.e., loans and taxes), were excluded when they were not a cost incurred for the production of the flowers or were reclassified to meet the requirements of the constructed

value provision. When materials and overhead could not be specifically identified with a flower type, the materials were allocated on acreage and the overhead costs were allocated on direct production labor. General expenses were calculated as a percentage of the cost of manufacturing. Actual general expenses were used in all instances as they exceeded the 10% statutory minimum requirement. The statutory minimum 8% profit was also added when profit figures were not provided.

Currency Conversion

For comparisons involving purchase price transactions, when calculating foreign market value, we made currency conversions from Mexican pesos to U.S. dollars in accordance with § 353.56(a)(1) of our regulations. For comparisons involving exporter's sales price transactions, we used the official certified Federal Reserve exchange rate on the date of purchase pursuant to section 615 of the Trade and Tariff Act of 1984. We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations, as it supersedes that section of the regulations.

Verification

As provided in section 776(a) of the Act, we verified all information provided by the respondents, using standard verification procedures, including examination of accounting records and original source documents containing relevant information on selected sales. Information provided by Visaflor could not be sufficiently documented and was not used in our calculations.

Petitioner's Comments

Petitioner's Comment #1: Petitioner contends that, based on the cost of production of another Mexican grower, Floremor's home market sales are made at prices below the cost of producing the merchandise.

DOC Position: We disagree. The Department, as a matter of policy, does not compare one manufacturer's prices to another's cost of production to determine sales at less than cost. Furthermore, the allegation of sales at less than the cost of production was raised for the first time by petitioner in its December 12, 1986, pre-hearing brief, one and a half months after the preliminary determination. Based on the number of days required to implement a cost of production investigation, we reject this allegation as untimely.

Petitioner's Comment #2: Petitioner contends that flowers sold by Floremor in the home market are not export

quality merchandise, and therefore, cannot be compared to U.S. sales for purposes of determining sales at less than fair value.

DOC Position: We disagree. The Department verified that reported home market sales are such or similar merchandise to the export quality flowers sold in the United States. In reaching this determination, we examined internal company documents regarding classification and control of flowers sold in both markets, as well as observing the classification and packing of flowers at the farm.

Petitioner's Comment #3: Petitioner contends that the Department incorrectly calculated cost of production from information contained in the petition. Specifically, petitioner argues it is inappropriate: (1) To consider owner's salaries as profit rather than direct labor costs; and, (2) to consider working capital interest expenses as general expenses rather than direct overhead.

DOC Position: We disagree. The Department did not include officer's salaries and interest expenses incurred for working capital loans in the cost of manufacturing for its calculation of the constructed value used as "best information available." The term "officers' salaries" connotes wages paid for managerial services for the farm. The Department had no basis to conclude that such wages were paid for direct farm labor. Therefore, these wages were considered part of general expenses.

Petitioner's Comment #4: Petitioner contends that monthly averaging of United States prices distorts the fair value calculation and substantively affects the results contrary to the intent of Congress.

DOC Position: We disagree. See the "Fair Value Comparisons" section of this notice.

Petitioner's Comment #5: Petitioner contends that certain calculation errors were made in the Department's preliminary determination.

DOC Position: We agree that errors were made in certain calculations in our preliminary determination. These errors have been corrected in the calculations used for our final determination.

Respondents' Comments

Respondents' Comment #1: Respondents question whether the petitioner, Floral Trade Council, has standing to file a petition in this case. Specifically, respondents question whether the association represents sufficient numbers of the industry.

DOC Position: We disagree: As stated in *Certain Fresh Atlantic Groundfish from Canada* (51 FR 10041, March 24, 1986), neither the Act nor the Commerce

Regulations requires a petitioner to establish affirmatively that it has the support of a majority of a particular industry. The Department relies on petitioner's representation that it has, in fact, filed on behalf of the domestic industry, until it is affirmatively shown that this is not the case. Where domestic industry members opposing an investigation provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will review whether the opposing parties do, in fact, represent a major portion of the domestic industry. In this case, we have not received any opposition from the domestic industry and conclude that the petitioner does have standing.

Respondents' Comment #2: Respondents contend that the information contained in the petition is inadequate to justify initiation of an investigation.

DOC Position: We disagree. We determined that the petition, filed on behalf of the U.S. industry that grows certain fresh cut flowers, contained sufficient grounds upon which to initiate an antidumping duty investigation. In compliance with the filing requirements of § 353.36 of the Commerce regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Mexico are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

Respondents' Comment #3: Respondents contend that, as a matter of law, consignment sales cannot be considered to have been made at less than fair value, because the Mexican exporter does not fix the price nor does he know what the eventual price will be.

DOC Position: We disagree. The Department finds no basis for excluding consignment sales from the reaches of the antidumping law. Furthermore, the Department feels that when a consignment agreement has been reached between the Mexican flower exporter and a U.S. consignee, the Mexican exporter has granted the consignee implicit authority to set prices for those flowers destined for the U.S. market. While it is true that the exporter does not know the prices at which the flowers will be sold (nor does he have control over this function until the consignee reports the sales information back to him, *ex post facto*), it is the responsibility of the exporter to sever the relationship with his consignee if he feels that the arrangement is not mutually beneficial and/or agreeable.

Respondents' Comment #4:

Respondents contend that the Department should take into consideration the effect of inflation on U.S. prices and currency devaluation in Mexico.

DOC Position: We agree. By comparing sales in the home market to sales in the United States occurring within the same month, and adjusting constructed values for the effects of inflation on prices, the Department believes that it has satisfactorily taken into account the hyperinflationary situation in Mexico.

Respondents' Comment #5:

Respondents contend that in its final determination, the Department should calculate individual antidumping duty margins for each type of flower.

DOC Position: We disagree. The Department generally issues only one margin for a class or kind of merchandise. Carnations and chrysanthemums are in the same class or kind of merchandise. The Department's well-established practice in analyzing class or kind of merchandise addresses five factors. These are: (1) General physical characteristics; (2) the expectations of the ultimate purchasers; (3) the channels of trade in which the product is sold; (4) the manner in which the product is sold and displayed; and (5) the ultimate use of the merchandise in question. Fresh cut chrysanthemums and carnations, while distinguishable in appearance, are both ornamental cut flowers sold in bunches, through the same distribution channels, for a variety of short-term ornamental purposes.

Respondents' Comment #6:

Respondents argue that, in its preliminary determination, the Department erred in using the best information available in calculating margins for Florex and Visaflor.

DOC Position: We disagree. At the time of the preliminary determination, the Department was unable to discern the differences in grades sold in the home market, and therefore, applied the best information available in determining sales at less than fair value for these companies.

Respondents' Comment #7:

Respondents contend that sales of export quality flowers exist in the home market.

DOC Position: We agree. See DOC response to petitioner's comment #2.

Respondents' Comment #8:

Respondents contend that the Department was within the bounds of the statute in using monthly averages.

DOC Position: We agree. See the "Fair Value Comparisons" section of this notice.

Respondents' Comment #9:

Respondents argue that, in view of the rapid devaluation of the peso, the Department should make currency conversions at the exchange rate for the previous quarter, rather than the rate in effect at the time of the transactions.

DOC Position: We disagree. An analysis of the certified exchange rates for the period of investigation showed no evidence of temporary fluctuations which would warrant the use of the special rule contained in § 353.56(b). Since respondents have not demonstrated that they revised their prices to the United States during the period of investigation, we did not apply the special rule for sustained exchange rate fluctuations.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain fresh cut flowers from Mexico, with the exception of Floremor which is excluded from this determination, that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**, in accordance with section 733(d) of the Act. The U.S. Customs Service shall require a cash deposit or the posting of a bond on all entries equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/seller/exporter	Weighted-average margin percentage
Florex.....	4.60
Visaflor.....	29.40
Floremor.....	0.00
Tzitzic Tarela.....	4.01
Rancho Daisy.....	29.40
Rancho Alisitos.....	17.38
Rancho Mision el Descanso.....	24.33
Rancho Las Dos Palmas.....	29.40
Las Flores de Mexico.....	29.40
All others.....	18.20

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing

that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on fresh cut flowers from Mexico entered, or withdrawn from warehouse, for consumption on or after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

February 24, 1987.

[FR Doc. 87-4350 Filed 3-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-337-001]

Sodium Nitrate From Chile; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import of Administration, Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by the exporter and the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on sodium nitrate from Chile. The review covers one exporter of this merchandise and two periods from March 1, 1984 through February 28, 1986. The review indicates the existence of dumping margins.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the differences between United States price and foreign market value. During the Department's verification, we determined that Sociedad Quimica y Minera de Chile, S.A.'s response to our antidumping questionnaire was

significantly inadequate, largely due to its failure to report all its sales in the United States. As a result, we used the best information available for assessment and estimated antidumping duty cash deposit purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 3, 1987.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130/5255.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1986, the Department of Commerce ("the Department") published in the *Federal Register* (51 FR 25230) the final results of its last administrative review of the antidumping duty order on sodium nitrate from Chile (48 FR 12580, March 25, 1983). The Department received requests for administrative reviews covering two periods from the Olin Corporation, the petitioner, and from Sociedad Quimica y Minera de Chile, S.A. ("SQM"), exporter. We began this review of the order under our old regulations. After the promulgation of our new regulations, the petitioner and SQM requested in accordance with § 353.53(a) of the Commerce Regulations that we complete the administrative review for two consecutive periods. We published notices of initiation on April 18, 1986 (51 FR 12373) and May 30, 1986 (51 FR 19580). As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that review.

Scope of the Review

Imports covered by the review are shipments of industrial grade sodium nitrate (98 percent or more pure), currently classifiable under item 480.2500 of the Tariff Schedules of the United States Annotated. The review covers SQM the only exporter of this merchandise to the United States and two periods from March 1, 1984 through February 28, 1986.

During the Department's verification, we determined that Sociedad Quimica y Minera de Chile, S.A.'s response to our antidumping questionnaire was significantly inadequate, largely due to its failure to report all its sales in the United States. The Department used the best information available for assessment and estimated antidumping duty cash deposit purposes. The best information available was the rate from the fair value investigation.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 33.4 percent exists for the period March 1, 1984 through February 28, 1986.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter.

Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 33.4 percent shall be required. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after February 28, 1986 and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 33.4 percent shall be required. This deposit requirement is effective for all shipments of Chilean sodium nitrate entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-4351 Filed 3-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-479-601]

Postponement of Final Antidumping Duty Determination; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Yugoslavia

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the sole respondent in this investigation to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Based on this request, we are postponing our final determination as to whether sales of tapered roller bearing and parts thereof, finished or unfinished (tapered roller bearings), for Yugoslavia, have occurred at less than fair value until not later than June 22, 1987. We are also postponing our public hearing from March 12, 1987, until May 15, 1987.

EFFECTIVE DATE: March 3, 1987.

FOR FURTHER INFORMATION CONTACT: Judith Nehring (202-377-1778) or Mary S. Clapp (202-377-1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On September 19, 1986, we published a notice in the *Federal Register* (51 FR 33288) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether tapered roller bearings from Yugoslavia are being, or are likely to be, sold at less than fair value. On October 16, 1986, the International Trade Commission determined that there is a reasonable indication that imports of tapered roller bearings from Yugoslavia are materially injuring a U.S. industry (U.S. ITC Pub. No. 1889). On February 6, 1987, we published a preliminary determination of sales at less than fair value with respect to this merchandise (52 FR 3840). The notice stated that if the investigation proceeded normally, we would make our final determination by April 20, 1987.

On February 17, 1987, Unis Ro Promet, the sole respondent in this investigation, requested a postponement of the final determination until not later than the 135th day after publication of our preliminary determination, pursuant to section 735(a)(2)(A) of the Act. Respondent accounts for virtually all exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final determination until not later than June 2, 1987.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:30 p.m. on May 15, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by May 8, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

The U.S. International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 25, 1987.

[FR Doc. 87-4353 Filed 3-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-489-603]

Preliminary Affirmative Countervailing Duty Determination: Acetylsalicylic Acid (Aspirin) from Turkey

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Turkey of acetylsalicylic acid (aspirin) as described in the "Scope of Investigation" section of this notice. The estimated net subsidy for the review period is 5.17 percent *ad valorem* for Atabay Kimya Sanayi Ticaret A.S. (Atabay) and 24.28 percent *ad valorem*

for all other manufacturers, producers or exporters in Turkey of aspirin. We have established a separate rate for Atabay because we determine that there is a significant differential between its rate and the rate of other companies, within the meaning of section 607(2) of the Trade and Tariff Act of 1984 (19 U.S.C. 1671(e)). However, consistent with our states policy of taking into account program-wide changes that occur before our preliminary determination, we are adjusting the duty deposit rate to reflect changes in the Export Tax Rebate Program, the Supplemental Tax Rebate Program, the Resource Utilization Support Fund and the Export Revenue Tax Deduction Program. Accordingly, the duty deposit rate is 5.91 percent *ad valorem* for all manufacturers, producers or exporters in Turkey of aspirin.

We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of aspirin from Turkey that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries in the amount equal to the duty deposit rate.

If this investigation proceeds normally, we will make our final determination by May 11, 1987.

EFFECTIVE DATE: March 3, 1987.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose or Thomas Bombelles, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2815 or 377-3174.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Turkey of the subject merchandise. For purposes of this investigation, the following programs are found to confer subsidies:

- Export Tax Rebate and Supplemental Tax Rebate;
- Resource Utilization Support Fund; and
- Export Revenue Tax Deduction.

Case History

On October 31, 1986, we received a petition in proper form from the

Monsanto Company on behalf of the U.S. industry producing aspirin. In compliance with the filing requirements of 355.26 for the Commerce Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Turkey of aspirin receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that the U.S. aspirin industry is being materially injured or threatened with material injury by reason of these subsidized imports of Turkish aspirin. On November 20, 1986, we initiated a countervailing duty investigation (51 FR 43062, November 28, 1986).

Since Turkey is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of aspirin from Turkey materially injure, or threaten material injury to, U.S. industry. On December 15, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Turkey of aspirin (51 FR 96942, December 22, 1986).

We presented a questionnaire concerning the petitioner's allegations to the Government of Turkey in Washington, DC on December 4, 1986. On January 20, 1987, we received a response to our questionnaire from the Government of Turkey and Atabay. We presented deficiency questionnaires to the Government of Turkey in Washington, DC on February 3 and 6, 1987, requesting additional information from the Government of Turkey and Atabay, and reiterating our request for cooperation from the remaining producers and exporters identified in both the petition and the government's response of January 20. We stated that if we did not receive complete responses from all producers and exporters by February 13, 1987, we might have to use the best information available for our preliminary determination. We received a response to the February 3 deficiency questionnaire from the Government of Turkey, Atabay, Proses Kimya Sanayi ve Ticaret A.S. (Proses) and Birlesik Alam Ilac Fabrikalari (Birlesik) on February 13, 1987. We did not receive any response to our February 6 deficiency questionnaire.

The response we received from Proses was adequate, with the exception of information requested for one program, the Export Revenue Tax Deduction Program. The response received by Birlesik was inadequate. Therefore, we have not used it for purposes of the preliminary determination.

We did not receive responses from any other producers or exporters of aspirin in Turkey. Therefore, for purposes of this preliminary determination, we used the best information available pursuant to section 776(b) of the Act. To derive the country-wide duty deposit rate, the best information available was used for the non-respondent companies, in addition to information submitted by the Government of Turkey and Atabay.

Scope of Investigation

The product covered by this investigation is acetylsalicylic acid (aspirin), containing no additives other than inactive substances (such as starch, lactose, cellulose, or coloring material) and/or active substances in concentrations less than those specified for particular non-prescription drug combinations of aspirin and active substances as published in the *Handbook of Non-Prescription Drugs*, 8th edition, American Pharmaceutical Association, and is not tablet, capsule or similar forms for direct human consumption. This product is currently provided for in item 410.72 of the *Tariff Schedules of the United States* (TSUS).

Analysis of Programs

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

It is the Department's policy to take into account program-wide changes when they are implemented after the review period, but before a preliminary determination. Where this condition is met, the rate for duty deposit or bonding purposes is raised or lowered as appropriate. This policy is desirable because it promotes the expeditious elimination or curtailment of subsidies and permits the Department to adjust the duty deposit rate to correspond as nearly as possible to the eventual duty liability. Any program-wide changes, however, must be verified to be accepted for purposes of the final determination.

In this investigation, we were informed by the Government of Turkey that subsequent to the review period, but prior to the preliminary determination, a number of programs were either eliminated or altered in such a way as to result in a fundamental change in the bestowal of benefits. Descriptions of these program-wide

changes, and of our treatment of them, follow in the description of the programs.

In accordance with our practice of accepting a response to an allegation which denies the receipt of benefits under a program, we preliminarily determine, subject to rigorous verification, that the manufacturers, producers, or exporters in Turkey of aspirin did not use the programs described in section III. With respect to the companies that did not respond, we note that, in the absence of company responses, verification may be impossible. If non-receipt of benefits cannot be verified, we will use the best information available, which may include information submitted by the petitioner, for our final determination.

For purposes of this determination, the period for which we are measuring subsidization ("the review period") is calendar year 1985. Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined to Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Turkey of the subject merchandise under the following programs:

A. Export Tax Rebate and Supplemental Tax Rebate

The Government of Turkey provides tax rebates to exporters of certain products, pursuant to Law number 261 of July 1963, and Decree number 7/10624 of September 16, 1975, as amended by Decree numbers 8/2625 (April 23, 1981), 8/4397 (April 22, 1982) and 83/7542 (December 29, 1983).

In 1975, Turkey's State Planning Organization conducted a study of the tax incidence on exported products. The government obtained information on the costs of production and tax incidence from producers on a product-by-product basis. The competitive position of a product in international markets, and thus its need for a rebate, was also taken into account. Rates of rebate were not to exceed the tax incidence on the product and could be lower where the full amount of the rebate was not necessary to make a product internationally competitive. The taxes intended to be rebated, which are set out in List A in Decree number 75/10624, are primarily indirect taxes, although several direct taxes are also included. The rate of rebate during 1985 for aspirin was 17.5 percent.

In order to determine whether export payments, purportedly operating as a

rebate of indirect taxes, are in fact a bona fide rebate of indirect taxes, the Department examines whether: (1) The program operates for the purpose of rebating indirect taxes; (2) there is a clear link between eligibility for export payments and indirect taxes paid; and (3) the government has reasonably calculated and documented the actual indirect tax incidence borne by the product concerned and has demonstrated a clear link between such tax incidence and the rebate amount paid on export.

Where these conditions are met, the Department considers that the rebate system does not confer a subsidy to the extent that it rebates prior stage indirect taxes on inputs that are physically incorporated in the exported products and indirect taxes levied at the final stage. To the extent that the rebates exceed the payment of such indirect taxes, we would find that a countervailable benefit is being provided.

In *Certain Welded and Carbon Steel Pipe and Tube Products from Turkey: Final Affirmative Countervailing Duty Determinations* (51 FR 1268, January 10, 1986), we determined that this program was a bona fide rebate of indirect taxes. Therefore, in this investigation we focused on whether the rebate accurately reflects the indirect tax incidence for aspirin. We preliminarily determine that the rebate is no longer linked to the actual indirect tax incidence because the system of indirect taxes has changed since the 1975 study was conducted and no new study has been prepared. With the introduction in Turkey on January 1, 1985, of the value added tax, most or all indirect taxes on inputs physically incorporated into aspirin (except import duties, from which exporters are largely exempt) and indirect taxes on the final stage of production have been abolished while the export tax rebates remained unchanged. Because this rebate is contingent upon export performance, we preliminarily determine that the full amount of the rebate is a countervailable export subsidy under section 771(5)(A) of the Act.

In addition to basic export tax rebates described above, the Government of Turkey also provides supplemental tax rebates to exporters that have annual exports of more than \$2 million. The rates of supplemental rebates increase as the value of a company's annual exports increase. Because this program is also contingent upon export performance, we preliminarily determine that it is a countervailable

export subsidy under section 771(5)(A) of the Act.

To calculate the benefit for Atabay, we divided the value of the total basic and supplemental rebates of the company by the value of exports. We thus calculated an estimated net subsidy of 2.44 percent *ad valorem* during the review period. For all other companies, we used information submitted by Proses and also used as the best information available the nominal basis export tax rebate rate for non-respondent companies. We then weight-averaged the *ad valorem* benefits by these companies' proportion of the value of Turkish exports of aspirin to the United States. On this basis, we calculated an estimated net subsidy of 17.45 percent *ad valorem*.

However, according to the government response, Communiqué No. 87/5 eliminated all export tax rebates and supplemental tax rebates on exports of aspirin to the United States as of February 7, 1987. Accordingly, we have taken this elimination into account by excluding the program from the duty deposit rate.

B. Payments to Exporters From the Resource Utilization Support Fund (RUSF)

The RUSF was created by Decree number 84/8860 which was published in the Official Journal on December 15, 1984, and became effective January 1, 1985. This fund provides payments to exporters and is also the source of funding for payments to investors with investment incentive certificates under the General Incentives Program. (The General Incentives Program is described in the "Programs Preliminarily Determined Not To Be Used" section of this notice below.) During the review period, exporters were eligible to receive payment in the amount of four percent of the FOB value of the exported goods which is repatriated into Turkish lira. (Where exports are transported on Turkish vessels, the CIF value of the exported goods is used.) Because this program provides for payments on the basis of export performance, we preliminarily determine that it is a countervailable export subsidy under section 771(5)(A) of the Act.

To calculate the benefit for Atabay, we divided the amount of the payments received by the total value of exports. The estimated net subsidy during the review period is 1 percent *ad valorem*. For all other companies, we used information submitted by Proses and used as the best information available the nominal percentage payment for non-respondent companies. We then weight-averaged the *ad valorem*

benefits by the companies' proportion of the value of Turkish exports of aspirin to the United States. On this basis, we calculated an estimated net subsidy of 3.83 percent *ad valorem*.

However, according to the government response, pursuant to Decree 85/11085, RUSF payments have been eliminated as of November 1, 1986. Accordingly, we have taken this elimination into account by excluding the program for the duty deposit rate.

C. Deduction from Taxable Income for Export Revenues

Section 8 of Law No. 5422, as amended by Section 6 of Law No. 2362, permits producers that export industrial products valued in excess of \$250,000 annually to deduct 20 percent of their export revenues from taxable corporate income. A five percent deduction is allowed for exporters that are not producers.

However, under Article 94 of the Turkish Income Tax Law, as amended by Law No. 2772, tax deductions are also taxed, but at a lower rate than the normal corporate tax rate. During the review period, if the savings from the export revenue deduction was distributed to shareholders, the deduction was taxed at the rate of 25 percent; if the income was retained it was taxed at 20 percent. Given that the corporate tax rate for the review period was 40 percent, the effective tax rate on deductions was either 15 percent, or 20 percent, depending on whether the savings from the deduction were distributed to shareholders or retained by the company.

We preliminarily determine that this program is countervailable as an export subsidy because it provides a benefit which is contingent upon export performance. The benefit is the amount of tax savings realized by using the deduction. For all companies, except Atabay, we do not have information on actual company experience. In the absence of information on utilization of this program, we are assuming that the exports to the United States by the non-respondent companies were produced by profitable corporations which exported more than \$250,000 annually, paid corporate tax at the rate of 40 percent and paid a tax of 25 percent on their tax deductions.

We calculated the tax savings of the non-respondent companies during the review period by comparing the maximum amount of tax the companies would have paid using the deduction for export revenues with the maximum amount the companies would have paid if they did not use the program. On this

basis, we calculated an *ad valorem* benefit of 3 percent.

To calculate the rate for Atabay during the review period, we calculated the company's tax savings and divided this amount by the value of the company's 1985 export sales. We calculated an estimated net subsidy of 1.73 percent *ad valorem*.

However, according to the government response, the corporate tax rate has risen to 46 percent since the review period. Moreover, pursuant to Decree No. 86/10415, effective March 7, 1986, the rate at which deductions are taxed has decreased to 10 percent. These tax law modifications will result in a fundamental change in the bestowal of benefits under this program. Accordingly, we have adjusted the duty deposit rate to reflect this change.

Taking into account the modifications in the tax laws, we used the same methodology described above to calculate the benefit for duty deposit purposes. We then weight-averaged the benefit for Atabay and the non-respondent companies by all the companies' proportion of the value of Turkish exports of aspirin to the United States. On this basis, we calculated a duty deposit rate of 5.91 percent *ad valorem* for all producers and exporters of aspirin in Turkey.

II. Programs Preliminarily Determined not to Confer Subsidies

A. Accelerated Depreciation

Petitioner alleges that, under the General Incentive Program, the Government of Turkey allows a higher rate of depreciation to particular industries. The ceiling on such depreciation, according to petitioner, is 50 percent and may reach twice the rate normally permitted.

According to the government response, accelerated depreciation does not exist as a special benefit under the General Incentive Program. Furthermore, any accelerated depreciation permitted by Turkish tax laws is equally available to all industries in Turkey. Therefore, we preliminarily determine that accelerated depreciation is not limited to a specific enterprise of industry or group of enterprises or industries.

B. Re-evaluation of Fixed Assets.

Petitioner alleges that, under the General Incentive Program, certain companies may re-evaluate their depreciable fixed assets at the end of each calendar year. The depreciation is then calculated on the newly assessed values. The rate at which re-evaluation

may exceed that of previous years is ten percent less than the increase in the wholesale price index. Petitioner further alleges that since 1984, aspirin producers in Turkey have been allowed to revalue those assets used as collateral security. This enables a company to secure more credit as well as providing a basis of higher depreciation charges, thus lowering the tax base and increasing net profits.

According to the government response, the ability to re-evaluate fixed assets does not exist as a special benefit under the General Incentives Program. Additionally, any ability to revalue fixed assets provided for by Turkish tax laws is equally available to all industries in Turkey. Therefore, we preliminarily determine that the re-evaluation of fixed assets is not limited to a specific enterprise of industry or group of enterprises of industries.

III. Programs Preliminarily Determined not to be Used

According to the government response, the programs described below were not used by the producers or exporters of aspirin in Turkey.

A. General Incentives Program

Petitioner alleges that a variety of benefits are made available to firms in certain industries or regions of Turkey which obtain investment incentive certificates under the General Incentive Program from Turkey's State Planning Organization.

The General Incentives Program is designed to implement the targets of Turkey's five-year development plan and annual development programs. The government of Turkey in its questionnaire response states that the goals of the General Incentives Program are to remove development disparities among different regions, to assure economically efficient investments by region and by sector, and to direct savings to the most economically suitable investment areas.

1. *Income and Corporate Tax Allowance.* Petitioner alleges that, depending upon the region and the economic sector in which the investment is made, holders of investment incentive certificates may deduct from taxable income that portion of any new investment which is not receiving government-sponsored financing at interest rates inconsistent with commercial considerations.

2. *Customs Duty Exemptions.* Petitioner alleges that holders of investment incentive certificates benefit from customs duty exemptions on imports of fixed assets. Petitioner further alleges that for new investments,

the first three months' requirements of imports of spare parts and of operation-related raw materials and intermediate goods may be exempted from customs duties.

3. *Customs Duty Exemptions on Physically Incorporated Raw Materials.* Petitioner alleges that, where duties are paid on imported raw materials for use in manufacture for export, a rebate in the amount of ten percent of the FOB value of exported goods is provided to lessen the impact of the various import and internal taxes. Petitioner further alleges that the rebate rate under this investment incentive program is arbitrary and bears no necessary relation to the amount of import duties paid.

4. *Foreign Exchange Allocation Scheme.* Petitioner alleges that exporters are eligible to receive special foreign exchange allocations equivalent to 50 percent of the value of the goods to be exported in order to facilitate the purchase of imported raw materials for export, and that such imported raw materials are exempt from customs duties and other taxes. Petitioner states that exporters are entitled to use these foreign exchange earnings for payments for goods up to twice the value of inputs imported under the cash against goods scheme. Petitioner also alleges that the government makes available foreign exchange conversion authorizations from the Export Promotion Foreign Exchange Fund, and that exporters are entitled to priority in foreign exchange allocations equivalent to one percent of their foreign exchange receipts in the previous year, subject to a limit of US\$50,000. According to petitioner, the incentive value of this foreign exchange allocation lies in the fact the foreign exchange commands a premium over its official market rate, which can be appropriated by the recipient.

5. *Investment Goods Manufacturer's Incentive Credit.* According to the government response, holders of an Investment Goods Manufacturer's Certificate of Qualification may extend credit to their buyers using the resources of the Investment Goods Incentive Fund. Certificate holders are also eligible for an exemption from customs duties up to 25 percent of the industrial costs of raw and secondary materials.

6. *Authorization to Seek Foreign Financing.* Petitioner alleges that holders of incentive certificates who have export orders in hand, or who are willing to guarantee exports of a specific value, are permitted to arrange credit abroad in order to finance their import needs, in an amount up to 50 percent of the value of the export orders in hand or 50 percent of the export commitment.

This authorization is subject to the condition that the exporter will repay the external credit out of export earnings.

7. *Employee Wage and Salary Tax Exemption.* Petitioner alleges that employees working in facilities constructed in certain designated priority development regions or in priority industries are exempted from income tax on their wages and salaries, and that this can result in an employee cost subsidy.

8. *Exemptions on Loan Fees.* Petitioner alleges that exporters who commit to export a given portion of their output for five years after reaching full production capacity receive exemptions from loan fees on long-term domestically funded loans. The necessary ratio of exports to output varies according to region, and is lower in less developed regions.

9. *Incentive Premium for Domestically Obtained Capital Goods.* Petitioner alleges that a percentage of the value of capital goods obtained domestically is paid to the investor as an incentive.

10. *Other Tax Exemptions.* Petitioner alleges that taxes, fees, and similar charges are not levied on industrial building construction and on employee housing covered by an incentives certificate. Petitioner states that various other dues are not levied on projects in certain designated development regions. Petitioner further alleges that the real estate tax on fixed estate assets is waived for investments benefitting from incentives.

B. Export Promotion Programs

Although not alleged in the petition, according to the government response, exporters may obtain an Export Incentive Certificate under annually published Export Promotion Decrees. The holder of an Export Incentive Certificate is eligible for export credits, customs duty exemptions, the benefits of the Resource Utilization Support Fund and an allocation of foreign exchange.

IV. Programs Preliminarily Determined to be Terminated

According to the government response, the programs described below have been terminated.

A. Interest Rebates on Short-Term Credits

Petitioner alleges that companies holding investment incentive certificates are eligible to receive long-term investment loans and short-term export loans at below-market rates in the form of interest rebates issued by the Interest

Spread Return Fund of the Central Bank of Turkey.

B. Customs Duty Deferrals

Petitioner alleges that, during 1980, the Government of Turkey accepted a measure which permitted delayed payment of up to six months of duties and fees on imported materials.

C. Preferential Export Financing

Petitioner alleges that the Government of Turkey, through the Interest Equalization Fund of the Central Bank, provides short-term export credits at preferential rates.

V. Program Preliminarily Determined not to Exist

According to the government response, the programs described below do not exist.

A. Credit for Operational Requirements

Petitioner alleges that investors with incentive certificates are eligible to receive credit with a maturity of five years for their operational requirements on terms inconsistent with commercial considerations.

B. Preferential Interest Rates on Loans of Foreign Origin

Petitioner alleges that the Government of Turkey sets the interest rate on loans of foreign origin with a maturity of eight years and a three-year grace period at rates inconsistent with commercial considerations.

C. Exemptions from Taxes on Payments to Foreign Suppliers

Petitioner alleges that holders of incentive certificates are exempted from payment of taxes or other charges normally assessed against payments made to foreign suppliers for imported goods.

D. Premium to Support Investment

Petitioner alleges that the Government of Turkey, through the RUSF, provides cash payments to investors from "Funds to Support Resource Use." This contribution is called a premium to support investment and is provided as a percentage of fixed costs of an investment. The percentage varies depending upon the region in which the project is being carried out and upon the cost of the investment.

Verification

In accordance with section 776(a) of the Act, we will verify the information used in making our final determination.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our

determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days after the Department makes its final determination.

Public Comment

In accordance with § 355.35 of the Commerce Regulations (19 CFR 355.35), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination, at 1:30 p.m. on April 13, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within ten days of the publication of this notice in the *Federal Register*.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least ten copies of the proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by April 6, 1987. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d), all written views will be considered if received not less than 30 days before the final determination is due, or, if a hearing is held, within ten days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act [19 USC 1671b(f)].

Dated: February 24, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-4420 Filed 3-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-412-020]

Stainless Steel Plate From United Kingdom; Initiation of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Initiation of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce is initiating an administrative review of the countervailing duty order on stainless steel plate from the United Kingdom. The review covers the period April 1, 1985 through February 28, 1986.

EFFECTIVE DATE: March 3, 1987.

FOR FURTHER INFORMATION CONTACT: Paul Marselien or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253/2786.

Initiation of Review

In accordance with section 751(a) of the Tariff Act of 1930, we are initiating an administrative review of the countervailing duty order on stainless steel plate from the United Kingdom. The review covers the period April 1, 1985 through February 28, 1986.

This initiation and notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)).

Dated: February 24, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-4354 Filed 3-2-87; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Exxon Company, U.S.A. From an Objection by the New Jersey Department of Environmental Protection

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and stay.

On January 13, 1987, the Secretary of Commerce received a letter on behalf of Exxon Company, U.S.A. (Appellant) filing a Notice of Appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H. The appeal is taken from an objection by the New Jersey Department of Environmental

Protection (State) to Exxon's consistency certification for U.S. Army Corps of Engineers Permit Application NAPOP-R-86-0758-11 under section 404 of the Clean Water Act of 1977 for construction of Appellant's proposed service station which involves the filling of wetlands in Dover Township, New Jersey.

Appellant requested and has been granted a stay to continue negotiations with the State. The stay will expire at the end of four months or earlier if requested by Appellant or the State. The stay may be extended for good cause. The appeal may be resumed by the Secretary on Appellant's or the State's motion or by the Secretary on his own accord. If the appeal is resumed, public comments will be solicited in the Federal Register and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Katherine A. Pease, Attorney/Adviser, Office of General Counsel, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235 (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: February 17, 1987.

Daniel W. McGovern,
General Counsel.

[FR Doc. 87-4355 Filed 3-2-87; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Control Limits for Wool Textile Products Produced or Manufactured in the Government of the People's Republic of Bulgaria

February 25, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 4, 1987. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which

consultations have been requested call (202) 377-3740.

Background

On April 1, 1986, a notice was published in the Federal Register (51 FR 11090), which announced that the Government of the United States under section 204 of the Agricultural Act of 1956, as amended, had requested consultations with the Government of the People's Republic of Bulgaria concerning wool coats in Category 435, produced or manufactured in Bulgaria. In consultations between the two governments, agreement was reached on this category for the twelve-month period which began on May 1, 1986 and extends through April 30, 1987 at a level of 11,500 dozen. Carryforward is being applied to this level for an adjusted level of 12,190 dozen.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of wool textile products in Category 435 during the twelve-month period which began on May 1, 1986 and extends through April 30, 1987, in excess of the designated restraint level.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709, as amended on April 7, 1983 (49 FR 15175); May 3, 1983 (48 FR 19924); December 14, 1983 (48 FR 55607); December 30, 1983 (48 FR 57584); April 4, 1984 (49 FR 13397); June 28, 1984 (49 FR 26622); July 16, 1984 (49 FR 28754); November 9, 1984 (49 FR 44782); and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 25, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1954), you are directed to prohibit, effective on March 4, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of certain wool textile products in Category 435, produced or manufactured in Bulgaria and exported during the twelve-month period which began on May 1, 1986 and extends

through April 30, 1987, in excess of 12,190 dozen.^{1 2}

Textile products in Category 435 which have been exported in the United States prior to May 1, 1986 shall not be subject to this directive.

Textile products in Category 435 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of the Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-4422 Filed 3-2-87; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 4, 1987. For further information contact

¹ The limit has not been adjusted to account for any imports exported after May 1, 1986. Import charges for imports during the period May 1, 1986-December 31, 1986 amount to 10,594 dozen.

² The limit set forth above has been adjusted for carryforward to the provisions of the bilateral agreement of June 20 and November 27, 1987, between the Governments of the United States and Bulgaria which provides, in part, that: (1) Specific limits may be exceeded by 11 percent for carryforward; and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Further adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and July 11, 1985 between the Governments of the United States and Malaysia provides, among other things, for percentage increases in certain categories, provided a corresponding reduction in equivalent square yards is made in one or more other specific limits during the agreement year (swing); for the carryover of shortfalls in certain categories from the previous agreement year (carryover); and for the borrowing of yardage from the succeeding year's limit with the amount used being deducted from the limit in the succeeding agreement year (carryforward).

In accordance with the terms of the bilateral agreement and at the request of the Government of Malaysia, flexibility in the form of swing, carryover and carryforward is being applied, variously, to cotton, wool and man-made fiber textile products in Categories 331, 337/637, 339, 347/348, 369-S, 438-W, 631 and 647/648, produced or manufactured in Malaysia and exported during the period which began, in the case of Categories 331, 339, 347/348, 369-S, 438-W, 605-T, 631 and 647/648, on January 1, 1986; in the case of Category 337/637, on May 1, 1986; and, in the case of Category 605-T, on September 1, 1986; and extended through December 31, 1986.

Accordingly, in the letter which follows this notice, the Chairman of CITA directs the Commissioner of Customs to adjust the limits for the foregoing categories at the designated limits.

A description of textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386)

and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules Of The United States Annotated* (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 25, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of December 23, 1985, June 10, 1986 and November 25, 1986 issued to you by the Chairman, Committee for the Implementation of Textile Agreements concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Malaysia and exported during the designated periods.

Effective on March 4, 1987, the directives of December 23, 1985, June 10, 1986 and November 25, 1986 are hereby further amended to include adjusted limits for the following categories:*

Category and Adjusted Twelve-Month Restraint Limit¹ (January 1, 1986-December 31, 1986)

331-729,609 dozen pairs

339²-452 dozen

347/348-247,238 dozen of which not more than 128,488 shall be in Category 348

369-S³-623,487 pounds

438-W⁴-3,441 dozen

631-389,550 dozen pairs

647/648-875,498 dozen

Category and Adjusted Eight-Month Restraint Limit⁵

337/637-117,226 dozen

Category and Adjusted Four-Month Restraint Limit⁶ (September 1, 1986-December 31, 1986)

* The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and July 11, 1985 between the Governments of the United States and Malaysia provides, in part, that: (1) Specific limits or sublimits may be exceeded by not more than 5 percent, provided a corresponding reduction in equivalent square yards is made in one or more other specific limits during the same agreement year; (2) specific limits may be adjusted for carryover and carryforward up to 11 percent of the applicable category limits; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1985.

² Category 339 is a sublevel of Category 338/339.

³ In Category 369, only TSUSA number 366.2840.

⁴ In Category 438, only TSUSA numbers 384.1307, 384.1309, 384.2711, 384.5434, 384.5910, 384.6310, 384.7724 and 384.9640.

⁵ The limit has not been adjusted to account for any imports exported after April 30, 1986.

⁶ The limit has not been adjusted to account for any imports exported after September 30, 1986.

605-T⁷-140,750 pounds

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-4421 Filed 3-2-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meetings:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Monday-Wednesday, 23-25 March 1987.

Time:

23 March 1987, 1400-1700, Weapons FSG, Pentagon, Closed

24 March 1987, 0700-1630, General Membership Mtg, Ft. McNair, Wash., DC, Closed

25 March 1987, 0815-1600, Human Capabilities & Resources FSG, Pentagon, Open

25 March 1987, 0830-1630, C3I FSG, Pentagon, Closed.

Place: Various—see above.

Agenda: The 1987 Army Science Board General Membership Meeting program will include briefings of all Ad Hoc Subgroups and will include three Functional Subgroup meetings. The open portions of the meeting are open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The closed portions of the meeting are closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening them to the public. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-4419 Filed 3-2-87; 8:45 am]

BILLING CODE 3710-08-M

⁷ In Category 605, only TSUSA number 310.9500.

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS); Adam's Rib Recreational Area; Brush Creek, Town of Eagle, Eagle County, CO

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: The U.S. Forest Service released a final EIS on the Adam's Rib Recreation Area in July 1982. The scope of the EIS centered on ski area development on Forest Service Lands. Subsequently, the Forest Service issued a special use permit to develop Adam and Eve Mountain at 9,000 skiers at one time with a base facility located in East Brush Creek. The specific location and design of the base facility was not identified or evaluated in the Forest Service final EIS. The adequacy of the EIS was challenged in Federal District Court. The document was ruled to be sufficient for the Forest Service to make a decision on the special use permit. The Court also ruled that the Corps of Engineers will be required by the National Environmental Policy Act (NEPA) to consider the economic feasibility of each alternative base area configuration within the Forest Service's preferred alternative, the unavoidable environmental consequences of each base area configuration, and detailed measures necessary to mitigate those consequences. Such consideration would take place during the Corps' Section 404 permit process.

The Adam's Rib Recreation Area has applied for a Department of Army permit under section 404 of the Clean Water Act (PN 9561) to place fill in Brush Creek and its adjacent wetlands for construction of a four season resort. Approximately 900 feet of East Brush Creek would be channelized and 51.5 acres of wetlands would be filled as a result of the development. The purpose of the base area development is to provide a destination resort to be utilized year-around to complement the winter ski area development.

The Corps EIS will evaluate alternative base area configurations and locations associated with the Forest Services' preferred alternative as described in their final EIS. In accordance with NEPA, the Corps is adopting the Forest Service Final EIS.

Alternatives

The alternatives being considered at this time are:

(1) Commercial and residential development centered in the Vassar Meadows (applicant's proposal).

(2) Varied configuration of commercial and residential development located in Woodrun, Vassar Meadows, and Joe Goode Meadow areas.

(3) Scaled-down commercial and residential development plan.

(4) No action, or permit denial.

(5) Other feasible alternatives identified during the scoping process.

Significant Issues

The significant issues identified to date which will be analyzed in the EIS are listed below.

- (1) Impacts on wetlands.
- (2) Impacts on water quality.
- (3) Impacts on stream flow.
- (4) Impacts on fish and wildlife resources.
- (5) Impacts on stream hydrology and flood plains.
- (6) Other significant issues identified during their scoping process.

Scoping

Concurrently with this notice, the Sacramento District is issuing a public notice to initiate the scoping process. The public notice will be sent to all known interested parties, and will request that the reviewers provide comments on the topical scope, alternatives, and significant issues to be covered in the EIS. We intend to accomplish the scoping process in this manner; however, if it is perceived that this method is not adequate, the need for public scoping meetings will be considered.

Other Environmental Review and Consultation

Required review and consultation to be conducted during the EIS process include sections 401 and 404 of the Clean Water Act, Fish and Wildlife Coordination Act, National Historic Preservation Act, and Executive Order 11988 (Flood Plain Management). Other statutes and regulations, as applicable, will also be complied with during the EIS process.

Availability of DEIS

We estimate that the DEIS will be made available to the public in September, 1987.

Questions concerning the proposed action and EIS should be directed to Mr. Jim Gibson, Regulatory Section, U.S. Army Corps of Engineers, 650 Capitol

Mall, Sacramento, California 95814, telephone (916) 551-2261 (FTS 460-2261).

Wayne J. Scholl,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 87-4335 Filed 3-2-87; 8:45 am]

BILLING CODE 3710-EH-M

Chief of Engineers Environmental Advisory Board Open Meeting

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of open meeting.

SUMMARY: Under section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) this notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Chief of Engineers Environmental Advisory Board (EAB). The meeting is to be jointly chaired by Dr. Evan C. Vlachos, Chairman, EAB, and Lieutenant General E.R. Heiberg III, Chief of Engineers, U.S. Army. The meeting is open to the public.

DATES: The meeting will be held from 1:00 p.m., Wednesday, March 18, 1987, to 11:00 a.m., Friday, March 20, 1987.

PLACE: The meeting will be held at the Clarion Hotel, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Kit J. Valentine, Chief, Office of Environmental Overview or Captain Glen J. Lozier, Office of the Chief of Engineers, Washington, DC 20314-1000, (202) 272-0166.

SUPPLEMENTARY INFORMATION: The schedule and proposed agenda of the Environmental Advisory Board meeting is:

Environmental Data and Its Use in Decision Making

18 March Wednesday, P.M. Session

1:00—Meeting convened—Opening remarks

1:35—Charge to the Chief of Engineers Environmental Advisory Board (EAB)—MG Hatch

2:20—Panel Discussion

- Ace generation and use of Environmental Data
- Trinity River Comprehensive Study
- Lower Mississippi River Study
- District Use of GIS Systems
- CEDERR and EIAC
- Graft GIS System, ASIS & ETIS

4:30—Discussion with the panel—EAB

5:00—Meeting recess

19 March Thursday A.M. Session

8:00—Old Business

8:30—Panel Discussion

- Other agencies experiences with environmental data
 - NOAA—Ocean assessment and NEDRESS
 - USGS—NASQAN
 - NPS—Archeological Database
 - Heritage program, Nature Conservancy
 - BOVA, Virginia Fish & Game
- 11:30—Discussion with the panel—EAB

P.M. Session

- 1:15—Panel Discussion
- The use of environmental data by decision makers
 - COE experiences
 - EPA, National & Regional Databases
 - DOE Perspectives
 - Information and the Congress
- 3:30—Discussion with the panel—EAB
- 5:00—Meeting recess

20 March Friday A.M. Session

- 8:00—EAB Report to the Chief of Engineers
- 9:30—Chief of Engineers Response
- 10:30—Public Comments
- 11:00—Meeting Adjournment.
- John O. Roach II,
Army Liaison Officer with the Federal Register.

[FR Doc. 87-4418 Filed 3-2-87; 8:45 am]

BILLING CODE 3710-06-M

DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****Federal Acquisition Regulation (FAR); Information Collection Under OMB Review**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Organization and Direction of work.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Mathews, Office of Federal Acquisition and Regulatory Policy (202)

523-3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7268.

SUPPLEMENTARY INFORMATION:**a. Purpose**

When the Government awards a cost-reimbursement construction contract, the contractor must submit to the contracting officer and keep current a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under the contract, and their respective duties. The chart is used in administration of the contract and as an aid in determining cost.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents, 50; responses per respondent, 1; total annual responses, 50; hours per response, .75; and total burden hours, 38.

Obtaining Copies of Proposals

Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0064, Organization and Direction of Work.

Dated: February 19, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87-4333 Filed 3-2-87; 8:45 am]

BILLING CODE 6820-61-M

SUPPLEMENTARY INFORMATION:**a. Purpose**

Incentive contracts are normally used when the required supplies or services can be acquired at lower costs, and sometimes with improved delivery or technical performance, by relating the amount of profit payable under the contract to the contractor's performance. The information required periodically from contractors is needed to determine the contractor's performance in meeting the incentive target and the appropriate price revisions, if any.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents, 2000; responses per respondent, 1; total annual responses, 2000; hours per response, 1; and total burden hours, 2000.

Obtaining Copies of Proposals

Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0067, Incentive Contracts.

Dated: February 19, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87-4334 Filed 3-2-87; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF EDUCATION**Proposed Information Collection Requests**

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 2, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Incentive Contracts.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mrs. Victoria Moss, Office of Federal Acquisition and Regulatory Policy (202) 523-5168 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7268.

FOR FURTHER INFORMATION CONTACT:

Margaret B. Webster, (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: February 26, 1987.

Carlos U. Rice,

Director for Information Technology Services,

Office of Elementary and Secondary Education

Type of Review: REVISION

Title: Application for the Migrant Education Basic Formula Grant Program

Agency Form Number: ED 362

Frequency: Recordkeeping

Affected Public: State or local governments

Reporting Burden:

Responses: 51

Burden Hours: 714

Recordkeeping Burden:

Recordkeepers: 51

Burden Hours: 51

Abstract: State educational agencies (SEAs) are required to submit an application to the Secretary for Federal assistance to operate a State Migrant education program. The program awards grants to (SEAs) to establish or improve programs of education designed to meet the special educational needs of migratory workers or migratory fishers.

Office of Elementary and Secondary Education

Type of Review: REVISION

Title: Project Performance Reports for the Indian Education Programs

Agency Form Number: ED 354-1

Frequency: Annually

Affected Public: State or local governments

Reporting Burden:

Responses: 1200

Burden Hours: 2400

Recordkeeping Burden:

Recordkeepers: 1200

Burden Hours: 1200

Abstract: The project performance report requests information from formula grantees to be used for program assessment, planning and reporting purposes, as well as determine compliance with program regulations.

Office of Elementary and Secondary Education

Type of Review: EXTENSION

Title: Application for Women's Educational Equity Act Program

Agency Form Number: ED 436-1

Frequency: Annually

Affected Public: Individuals or households, state or local governments, non-profit institutions

Reporting Burden:

Responses: 400

Burden Hours: 6400

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This application will be used by institutions to apply for funds under the Women's Educational Equity Act Program. The Department will analyze the information contained in these applications to insure that funds are distributed fairly and that the projects are cost-effective.

Office of Special Education and Rehabilitative Services

Type of Review: REINSTATEMENT

Title: Three Year State Plan for Vocational Rehabilitation Services Under Title I of the Rehabilitation Act, as amended,

Agency Form Number: ED Form RSA (SPUR)

Frequency: Every Three Years

Affected Public: State or local governments

Reporting Burden:

Responses: 84

Burden Hours: 168

Recordkeeping Burden:

Recordkeepers: 84

Burden Hours: 6.7

Abstract: A three year State plan is submitted by States in order to receive Federal funds under Title I of the

Rehabilitation Act, as amended. The State plan is the primary basis upon which the Department monitors and evaluates States' performance with respect to the requirements of Part A under Title I of the Rehabilitation Act, as amended.

Office of Special Education and Rehabilitative Services

Type of Review: NEW

Title: Study of Programs of Instruction for Handicapped Children and Youth in Day and Residential Facilities

Agency Form Number: B20-23P

Frequency: Once only

Affected Public: State or local governments; business or other for-profit; non-profit institutions; small businesses or organizations

Reporting Burden:

Responses: 540

Burden Hours: 1344

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This survey will collect information from principals and directors of day and residential schools for children with handicaps. The Department needs this information to evaluate program and population characteristics in this segment of educational services to handicapped persons.

Office of Special Education and Rehabilitative Services

Type of Review: REVISION

Title: FY 1987-89 State Plan Under Part B of the Education of the Handicapped Act, as amended

Agency Form Number: ED 9055

Frequency: Triennial

Affected Public: State or local governments; Federal agencies or employees

Reporting Burden:

Responses: 19

Burden Hours: 475

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: States are required to submit a State plan in order to receive funds under the Education of the Handicapped Act, as amended. The information will be used as a basis for determining (1) grant eligibility, (2) compliance review and enforcement, and (3) the kinds of technical assistance the State may require.

Office of Educational Research and Improvement

Type of Review: EXISTING COLLECTION

Title: Application for Field Initiated Program**Agency Form Number:** G50-27P**Frequency:** Annually**Affected Public:** Individuals or households; state or local governments; non-profit institutions; small businesses or organizations**Reporting Burden:****Responses:** 350**Burden Hours:** 1050**Recordkeeping Burden:****Recordkeepers:** 0**Burden Hours:** 0

Abstract: This form is used by private organizations, institutions, agencies or individuals to apply to the Department for grants under the Field Initiated Research Program. Grants are awarded on a competitive basis to those applicants that submit new ideas designed to provide more dependable knowledge about the process of learning and education.

Office of Educational Research and Improvement**Type of Review:** REINSTATEMENT**Title:** Application for Research and Development Center Program**Agency Form Number:** G50-28P**Frequency:** Annually**Affected Public:** State or local governments; non-profit institutions**Reporting Burden:****Responses:** 50**Burden Hours:** 6000**Recordkeeping Burden:****Recordkeepers:** 6000**Burden Hours:** 6000

Abstract: This form will be used by research and development centers established by institutions of higher education or by interstate agencies to apply for grants to conduct educational research and development.

Office of Postsecondary Education**Type of Review:** NEW**Title:** Fund for Improvement of Postsecondary Education—Application for the Drug Prevention Program**Agency Form Number:** ED 0005**Frequency:** Biennially and Annually**Affected Public:** Institutions of higher education**Reporting Burden:****Responses:** 800**Burden Hours:** 12,800**Recordkeeping Burden:****Recordkeepers:** 0**Burden Hours:** 0

Abstract: This application will be used by institutions of higher education to apply for grants under the Drug Prevention Program. This data will be used to make competitive grant awards under this program.

Office of Postsecondary Education**Type of Review:** NEW**Title:** Fund for the Improvement of Postsecondary Education Application for Community Service and Student Financial Independence**Agency Form Number:** ED 0006**Frequency:** Annually**Affected Public:** State or local governments; non-profit institutions; small businesses or organizations**Reporting Burden:****Responses:** 200**Burden Hours:** 3200**Recordkeeping Burden:****Recordkeepers:** 0**Burden Hours:** 0

Abstract: This application will be used by institutions of higher education, and other public and private organizations to apply for grants under the Community Service and Student Financial Independence Program. This is a competitive grant program established to encourage participation of higher education students in community service activities in exchange for educational services or financial assistance.

Office of Planning, Budget and Evaluation**Type of Review:** NEW**Title:** Public Opinion Surveys on Educational Issues**Agency Form Number:** P75-9P**Frequency:** Bi-Monthly**Affected Public:** Individuals or households**Reporting Burden:****Responses:** 86,400**Burden Hours:** 1728**Recordkeeping Burden:****Recordkeepers:** 0**Burden Hours:** 0

Abstract: A series of telephone polled surveys will be conducted to collect information from a random sample of respondents regarding educational policy issues. The data will be used to formulate new educational policies.

[FR Doc. 87-4374 Filed 3-2-87; 8:45 am]

BILLING CODE 4000-01-M

Inviting Applications for New Awards Under the Law-Related Education Program for Fiscal Year 1987 (CFDA No: 84.123)

Purpose: To provide persons with knowledge and skills pertaining to the law, the legal process, the legal system, and the fundamental principles and values on which these are based.

Deadline for Transmittal of Applications: April 28, 1987.

Deadline for Intergovernmental Review Comments: June 29, 1987.

Applications Available: March 13, 1987.

Available Funds Anticipated: Approximately \$2 million.

Estimated Range of Awards: \$10,000-\$150,000.

Estimated Average Size of Awards: \$74,000.

Estimated Number of Awards: 27.

Project Period: 12 months.

Competitive Priorities: In accordance with 34 CFR 75.105(c)(2)(ii), the Secretary will give competitive preference to projects that develop, test, demonstrate, and distribute new approaches or techniques in law-related education, as described in 34 CFR 241.10(c) of the regulations.

Invitational priority: Under 34 CFR 75.105(c)(1), the Secretary also invites applications for projects that would develop curricula emphasizing the fundamental principles on which the legal system is based, and fostering student character development by encouraging such qualities as informed respect for the law and an understanding of the rights and duties of American citizenship. Applications meeting the invitational priority will not receive absolute or competitive preference over other applications.

Moreover, applicants should note that the Secretary intends to announce, in a subsequent *Federal Register* notice, a separate grant competition under this program for projects related to the bicentennial of the U.S. Constitution. Applications under both competitions will be carefully reviewed to ensure that no grantee receives duplicative Federal funding.

Applicable Regulations: (a) The Law-Related Education Program Regulations, 34 CFR Part 241, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78 and 79.

For Applications or Information

Contact: Jack A. Simms, U.S.

Department of Education, 400 Maryland Avenue, SW., Room 2065, FOB-6, Washington, DC 20202. Telephone: (202) 732-4358.

Program Authority: 20 U.S.C. 3851

Dated: February 26, 1987.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87-4376 Filed 3-2-87; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Adult Education

AGENCY: National Advisory Council on Adult Education.

ACTION: Correction notice for public hearings on reauthorization of the Adult Education Act.

SUMMARY: On December 29, 1986, at 51 FR 46910, the Executive Director published a notice on the schedule of public hearings on the reauthorization of the Adult Education Act. An error was made in the dates, specifically, in the year, of the public hearings. This notice corrects that error. The year listed for each hearing should have been 1987 instead of 1986. The final public hearing is scheduled for April 1, 1987, at the E. Manfred Evans Community Adult School, 717 North Figueroa Street, Los Angeles, California, from 10:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Karen Shepard Saunders, Special Assistant, National Advisory Council on Adult Education, 2000 L Street NW., Suite 570, Washington, DC 20036 (202/634-6300).

Signed at Washington, DC, on February 24, 1987

Lynn Ross Wood,

Executive Director, National Advisory Council on Adult Education.

[FR Doc. 87-4331 Filed 3-2-87; 8:45 am]

BILLING CODE 4000-01-M

Desegregation Assistance Center and State Educational Agency Desegregation Programs; Meetings

AGENCY: Department of Education.

ACTION: Meetings to provide technical assistance.

SUMMARY: The Secretary of Education announces the following meetings to provide technical assistance regarding proposed regulations and their impact on the preparation of applications for funding for the Desegregation Assistance Center and State Educational Agency Desegregation Programs:

- (1) U.S. Department of Education Regions IX and X:
Region X, 50 United Nations Plaza, Room 209, San Francisco, California 94102.

March 16—9:00 A.M.

State Educational Agencies

March 17—9:00 A.M.

Desegregation Assistance Centers

- (2) U.S. Department of Education Regions I, II, and III, Headquarters, FOB #6, Room 3000, 400 Maryland Avenue, SW., Washington, DC 20202.

March 16—9:00 A.M.

State Educational Agencies

March 17—9:00 A.M.

Desegregation Assistance Centers

(3) U.S. Department of Education

Regions VII and VIII:

Region VIII, Federal Office Building, Room 244, 1961 Stout Street, Denver, Colorado 80294.

March 19—9:00 A.M.

Desegregation Assistance Centers

March 20—9:00 A.M.

State Educational Agencies

(4) U.S. Department of Education

Regions IV, V and VI:

Region IV, 10th Floor, Action Conference Room, 101 Marietta Tower, Atlanta, Georgia 30323.

March 19—9:00 A.M.

Desegregation Assistance Centers

March 20—9:00 A.M.

State Educational Agencies

Prospective applicants are encouraged to attend any of the four sites listed above. If you expect to participate, please notify Mr. Curtis Coates (202) 732-4345.

FOR FURTHER INFORMATION: Contact Mr. Curtis Coates, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2065, Washington, DC 20202. Mail Stop 6264, Telephone (202) 732-4345.

Dated: February 27, 1987.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87-4517 Filed 3-2-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Wind Energy Program, Availability of Solicitation for Cooperative Agreement Proposals

AGENCY: Department of Energy.

ACTION: Notice of Availability Solicitation for Cooperative Agreement Proposals.

SUMMARY: This document announces the issuance of Solicitation for Cooperative Agreement Proposals DE-SC02-87CH10329 by the Department of Energy, Chicago Operations Office, Solar Energy Research Institute (SERI) Area Office. The solicitation invites cooperative agreement proposals from United States organizations.

ADDRESS: Department of Energy, SERI Area Office, 1617 Cole Boulevard, Golden CO 80401.

FOR FURTHER INFORMATION CONTACT: Kathryn H. Wells, SERI Area Office, (303) 231-1495, Dr. Stephen L. Sargent, SERI Area Office, (303) 231-1366.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Department of Energy-SERI Area Office (SAO) is issuing a Solicitation for Cooperative Agreement Proposals (SCAP) for cooperative cost-shared research projects involving wind energy systems. This solicitation has the following objectives: (1) To provide information necessary for DOE and DOE laboratories to address critical R&D issues identified by the wind energy community in the Federal Wind Energy Multi-Year Program Plan, and (2) to provide a broad base of research data to assist industry in formulating and validating solutions to specific technical problems.

II. Eligible Awardees

Only U.S. organizations are eligible for award. Substantial proposer cost sharing is required.

III. Eligible Activities

Cooperative Agreements issued pursuant to this Notice are limited to the following research categories:

1. Wind-Hybrid Systems
2. Wind-Electric Water Pumping
3. Ridgeline Terrain Effects on Micrositing of Wind Farms
4. Macroscale Effects in Siting of Wind Farms
5. Other Related Research Activities

Systems to be tested are limited to one megawatt rated capacity per wind turbine.

VI. Proposing Procedures

Proposals must be received no later than April 9, 1987. Proposal content and evaluation criteria are set forth in the Solicitation for Cooperative Agreement Proposals.

It is anticipated that up to four DOE Cooperative Agreements will be awarded by August 30, 1987, with DOE funding up to \$100,000 per project.

Issued in Chicago, IL, on February 19, 1987.

John P. Kennedy,

Assistant Manager for Acquisition and Assistance.

[FR Doc. 87-4432 Filed 3-2-87; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award (Grant); Restriction on Eligibility

AGENCY: U.S. Department of Energy (DOE), San Francisco Operations Office.

ACTION: Notice of Program Interest-Restriction of Eligibility.

SUMMARY: DOE announces that it plans to conduct a competitive solicitation for post secondary two-year educational

institutions for the Minority Honors Training and Industrial Assistance Program. It is anticipated that the total amount of funding available for this program shall be \$385,000 for approximately six awards. The Statutory Authority for use of grant awards is Pub. L. 95-91, DOE Organization Act, and Pub. L. 95-619, Program Solicitation No. DE-PS03-87SF16925

Scope of Project

The DOE plans a competitive solicitation for accredited post secondary two-year educational institutions to submit proposals for the purpose of establishing a Minority Honors Training and Industrial Assistance Program. The actual work to be accomplished will be determined by the projects selected for awards. These will be chosen by a DOE Proposal Evaluation Panel. The basis for awards will depend on the innovativeness of the program presentations. The two main parts to this project are (1) development of energy-related industrial linkages with the educational institutions, (a) To provide better job opportunities for their financially needy minority honor graduates; (b) to provide industrial technology transfers to the educational institutions to improve the quality of the institutions' energy programs for a better trained and skilled work force to meet specific industrial needs; and (2) establishment of a minority honor scholarship effort to financially needy minority honor students training in energy programs. The scholarships will provide for tuition, books, tools, laboratory fees and miscellaneous enrollment costs. Emphasis will be given to the institutions' procedure in providing assistance to help place their honor graduates into jobs. The educational institutions are expected to co-fund a minimum of at least one-half of the Federal contribution.

This solicitation will be on a restricted eligibility basis for post secondary two-year educational institutions with a minimum of five energy-related training programs as a continuation of DOE's Minority Honors Training Program started in 1982.

DOE found at that time that few minorities were employed in energy related fields, and determined that two year educational institutions did not adequately meet their local energy industries' needs. Industries', in energy related fields, criticism has been that two-year educational institutions do not adequately meet their needs, resulting in having to retrain their graduates. In order to continue to correct this problem, this program's objective is to

help assure job opportunities for minorities in energy related fields by: (1) Providing needy honor students obtaining degrees in this area with financial assistance and, (2) establishing closer linkages between these institutions and energy industries.

FOR FURTHER INFORMATION CONTACT:

Patty Acosta, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612. Telephone: 415-273-6436.

Issued in Oakland, California.

Donald W. Pearman,
Acting Manager.

[FR Doc. 87-4433 Filed 3-2-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP85-437-003]

Mojave, Pipeline Co. et al.; Intent To Conduct Informal Public Meetings Inviting Comments on the Mojave—Kern River—El Dorado Pipeline Projects; Draft Environmental Impact Statement

March 3, 1987.

In the matter of (Docket Nos.) Mojave Pipeline Company, CP85-437-003; Kern River Gas Transmission Company, CP85-552-002; El Dorado Interstate Transmission Company, CP86-205-001; Northwest Pipeline Company, CP85-625-001; El Paso Natural Gas Company, CP86-197-003; and Transwestern Pipeline Company, CP86-212-001.

Notice is hereby given that the Staff of the Federal Energy Regulatory Commission and the California State Lands Commission intend to conduct joint informal public meetings for the purpose of soliciting comments to the draft environmental impact report/statement (EIR/EIS) which was circulated to the public and noticed in the *Federal Register* on January 23, 1987 (see 52 FR 2584 and 52 FR 2601). The attachment lists the locations, dates, and times of the meetings.

The above-captioned dockets involve three competing proposals to transport natural gas from various sources outside of California to the Bakersfield, California area for use in enhanced oil recovery (EOR) and related cogeneration projects.

The purpose of these meetings is to allow interested individuals the opportunity to provide oral comments on the draft EIR/EIS. Written comments may also be submitted in lieu of oral comments at these meetings. The offer of comments at these meetings in no

way precludes further written comments before the close of the comment period on April 24, 1987. Prospective commenters are requested to notify Mr. Robert Arvedlund (address below) by March 18, 1987 of their intent to comment and at which meeting they intend to do so. Following brief opening remarks and introductions by a presiding official, preregistered speakers will be allowed to present their comments. Those who have not preregistered will present their comments last, if time is available. Since these are informal meetings and not formal administrative hearings, commenters will not be cross-examined, but their remarks will be stenographically recorded to assist in the preparation of responses. Responses to comments will appear in the final EIR/EIS after due consideration.

At this time, it would appear appropriate to request commenters to limit their presentations so as not to exceed 5-10 minutes. This will afford time for others to participate. Additional time may be granted to anyone making comments by the presiding official as time permits.

Copies of the written transcript of each public meeting may be purchased by arrangement with the official reporter at the meetings.

Further information concerning the joint public comment meetings or about the EOR proposals in general is available from either of the following individuals:

Mr. Robert K. Arvedlund, Room 7102,
Environmental Evaluation Branch,
OPPR, Federal Energy Regulatory
Commission, Washington, DC 20426,
Telephone (202) 357-9043

or

Ms. Mary Griggs, California State Lands
Commission, 1807-13th Street,
Sacramento, CA 95814, Telephone
(916) 322-0354

Kenneth F. Plumb,
Secretary.

Attachment

Schedule of Joint FERC/SLC Public Comment Meetings

All meetings will begin promptly at 7:00 p.m.

Monday, March 23, 1987—Bakersfield
Civic Auditorium (Venus Room), 1001
Truxton Avenue, Bakersfield, CA

Tuesday, March 24, 1987—Barstow
Station Super 8 Motel, 1511 East Main,
Barstow CA

Wednesday, March 25, 1987—Board
Room of the Clark County School
District Education Center, 2832 East
Flamingo Road, Las Vegas, NV

Thursday, March 26, 1987—State Capitol Building Auditorium (behind Capitol Building), 500 North State Street, Salt Lake City, UT

[FR Doc. 87-4392 Filed 3-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP-87-25-000]

Shell Offshore Inc. and Shell Western E&P Inc. v. Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.; Complaint

February 25, 1987

On January 20, 1987, Shell Offshore Inc. and Shell Western E&P Inc. (referred to jointly as Shell) filed a complaint pursuant to 18 CFR 271.1105(d)(3) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. Shell requests the Production-Related Costs Board (Board) to find that Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., (Tennessee) is in violation of 18 CFR 271.1104(e)(2) by refusing to pay more than \$3,000,000 in interest attributable to unpaid and late-paid gathering and treating allowances.

Shell states that it sold natural gas produced from seventeen offshore and onshore Louisiana gas fields to Tennessee pursuant to eleven gas sale contracts from July 1980 until various dates in 1982, 1984, and 1985. It further states that each of the subject contracts expressly authorized Shell to collect allowances for gathering and/or treating natural gas sold to Tennessee and that Tennessee has either agreed to pay or has paid such allowances.

Shell also alleges that each of the subject gas sale contracts includes a provision which authorizes the collection of interest on all amounts due and payable under the contracts. It maintains that because each of the subject contracts expressly authorized the collection of gathering and/or treating allowances, such allowances are amounts due and payable under the contracts and are thus subject to interest accruals under the contract provisions authorizing the collection of interest.

Shell states that Tennessee has heretofore conceded that Shell is expressly authorized to collect the gathering and treating allowances provided in the contracts. However, because the interest provision in each of the contracts speaks only in general terms of amounts due and payable without mentioning section 110 of the NGPA or production-related cost allowances, Tennessee maintains that these provisions do not "expressly

authorize" the collection of interest within the meaning of § 271.1104(e)(2). Shell states that extensive discussions with Tennessee have failed to resolve the dispute between the parties.

Shell requests the Board to find that Tennessee has violated the provisions of 18 CFR 271.1104(e)(2) by refusing to pay interest on past due gathering and treating allowances, which Shell is authorized by contract to collect, and to order Tennessee to comply with that section of the Commission's regulations and its contracts with Shell by paying the amounts of interest that are due on both unpaid and late-paid gathering and treating allowances.

Under the Commission's Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Tennessee must file an answer to Shell's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Tennessee shall file its answer with the Commission not later than March 17, 1987. Publication of this notice in the Federal Register.

Any person desiring to be heard or to protest said complaint should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than March 17, 1987.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4393 Filed 3-2-87 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST87-351-000, et al.]

Valley Gas Transmission, Inc., et al., Notice of Self-Implementing Transactions

February 25, 1987.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of

the Natural Gas Policy Act of 1978 (NGPA).¹

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G-S" indicates transportation by an interstate pipeline company on behalf of any shipper pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by

¹ Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to a transaction reflected in this notice should on or before March 9, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission

will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Keneth F. Plumb,
Secretary.

Docket No. ¹	Transporter seller	Recipient	Date filed	Subpart	Expiration date ²	Transportation rate (?/MMBTU)
ST87-0351	Valley Gas Transmission, Inc.....	Pend Oreille Oil & Gas Co.....	11-03-86	G-EU		
ST87-0352	Natural Gas Pipeline Co. of America...	Northern Illinois Gas Co.....	11-03-86	B		
ST87-0353	Natural Gas Pipeline Co. of America...	Iowa Electric Light & Power Co.....	11-03-86	B		
ST87-0354	Natural Gas Pipeline Co. of America...	North Shore Gas Co.....	11-04-86	B		
ST87-0355	Natural Gas Pipeline Co. of America...	Illinois Power Co.....	11-04-86	B		
ST87-0356	Delhi Gas Pipeline Corp.....	Transcontinental Gas Pipe Line Corp.	11-06-86	C		
ST87-0357	Panhandle Eastern Pipe Line Co.....	Central Illinois Light Co.....	11-04-86	B		
ST87-0358	Panhandle Eastern Pipe Line Co.....	Indiana Gas Co.....	11-04-86	B		
ST87-0359	Trunkline Gas Co.....	Consumers Power Co.....	11-04-86	B		
ST87-0360	Transcontinental Gas Pipe Line Corp.	Union Gas Co.....	11-04-86	B		
ST87-0361	Texas Eastern Transmission Corp.....	Connecticut Natural Gas Corp.....	11-04-86	B		
ST87-0362	Texas Eastern Transmission Corp.....	Michigan Consolidated Gas Co.....	11-05-86	B		
ST87-0363	Transcontinental Gas Pipe Line Corp.	City of Danville.....	11-05-86	B		
ST87-0364	Transcontinental Gas Pipe Line Corp.	Virginia Natural Gas.....	11-05-86	B		
ST87-0365	Transcontinental Gas Pipe Line Corp.	City of Greer, Commission of Public Work.	11-05-86	B		
ST87-0366	Panhandle Eastern Pipe Line Co.....	Indiana Gas Co.....	11-05-86	B		
ST87-0367	Panhandle Eastern Pipe Line Co.....	Indiana Gas Co.....	11-05-86	B		
ST87-0368	Panhandle Eastern Pipe Line Co.....	Indiana Gas Co.....	11-05-86	B		
ST87-0369	Panhandle Eastern Pipe Line Co.....	Ohio Gas Co.....	11-05-86	B		
ST87-0370	Panhandle Eastern Pipe Line Co.....	Consumers Power Co.....	11-05-86	B		
ST87-0371	Transwestern Pipeline Co.....	Southern California Gas Co.....	11-05-86	B		
ST87-0372	Ong Transmission Co.....	Panhandle Eastern Pipe Line Co.....	11-05-86	C	04-04-87	10.00
ST87-0373	Ong Transmission Co.....	Northern Natural Gas Co.....	11-05-86	C	04-04-87	12.00
ST87-0374	Panhandle Eastern Pipe Line Co.....	Indiana Gas Co.....	11-05-86	B		
ST87-0375	Panhandle Eastern Pipe Line Co.....	Indiana Gas Co.....	11-05-86	B		
ST87-0376	Panhandle Eastern Pipe Line Co.....	Consumers Power Co.....	11-05-86	B		
ST87-0377	Panhandle Eastern Pipe Line Co.....	Indiana Gas Co.....	11-05-86	B		
ST87-0378	Panhandle Eastern Pipe Line Co.....	Village of Morton.....	11-05-86	B		
ST87-0379	Natural Gas Pipeline Co. of America...	Northern Illinois Gas Co.....	11-05-86	B		
ST87-0380	Transwestern Pipeline Co.....	Pacific Gas and Electric Co.....	11-05-86	B		
ST87-0381	Transcontinental Gas Pipe Line Corp.	Atlanta Gas Light Co.....	11-05-86	B		
ST87-0382	Transcontinental Gas Pipe Line Corp.	Elizabethtown Gas Co.....	11-05-86	B		
ST87-0383	Transcontinental Gas Pipe Line Corp.	Long Island Lighting Co.....	11-05-86	B		
ST87-0384	Panhandle Eastern Pipe Line Co.....	Consumers Power Co.....	11-06-86	B		
ST87-0385	Trunkline Gas Co.....	Consumers Power Co.....	11-06-86	B		
ST87-0386	Texas Gas Transmission Corp.....	Gulf South Pipeline Co.....	11-06-86	B		
ST87-0387	Texas Gas Transmission Corp.....	Memphis Light, Gas and Water Division.	11-06-86	B		
ST87-0388	Texas Gas Transmission Corp.....	Eastern Gas Transmission.....	11-06-86	B		
ST87-0389	Natural Gas Pipeline Co. of America...	Northern Illinois Gas Co.....	11-06-86	B		
ST87-0390	Natural Gas Pipeline Co. of America...	Northern Illinois Gas Co.....	11-06-86	B		
ST87-0391	Northern Natural Gas Co.....	Northern States Power Co. of Wisconsin.	11-06-86	B		
ST87-0392	PGC Pipeline.....	Texas Eastern Transmission Corp.....	11-06-86	C	4-05-87	21.50
ST87-0393	Northern Natural Gas Co.....	Austin Utilities.....	11-07-86	B		
ST87-0394	Northern Natural Gas Co.....	Iowa Southern Utilities Co.....	11-07-86	B		
ST87-0395	Panhandle Eastern Pipe Line Co.....	City of Fulton, Bd. of Public Works.....	11-07-86	B		

Docket No. ¹	Transporter seller	Recipient	Date filed	Subpart	Expiration date ²	Transportation rate (?/MMBTU)
ST87-0396	Panhandle Eastern Pipe Line Co.....	City of Fulton, Bd. of Pubic Works.....	11-07-86	B		
ST87-0397	Panhandle Eastern Pipe Line Co.....	City of Fulton, Bd. of Public Works.....	11-07-86	B		
ST87-0398	Panhandle Eastern Pipe Line Co.....	City of Fulton, Bd. of Public Works.....	11-07-86	B		
ST87-0399	Columbia Gulf Transmission Co.....	Panhandle Eastern Pipe Line Co.....	11-07-86	G		
ST87-0400	Valero Interstate Transmission Co.....	Channel Industries Gas Co.....	11-07-86	B		
ST87-0401	Panhandle Eastern Pipe Line Co.....	Indiana Gas Co.....	11-07-86	B		
ST87-0402	Panhandle Eastern Pipe Line Co.....	City of Fulton, Bd. of Public Works.....	11-07-86	B		
ST87-0403	Panhandle Eastern Pipe Line Co.....	City of Fulton, Bd. of Public Works.....	11-07-86	B		
ST87-0404	Panhandle Eastern Pipe Line Co.....	City of Fulton, Bd. of Public Works.....	11-07-86	B		
ST87-0405	Panhandle Eastern Pipe Line Co.....	City of Fulton, Bd. of Public Works.....	11-07-86	B		
ST87-0406	El Paso Natural Gas Co.....	Intersearch Gas Corp.....	11-10-86	B		
ST87-0407	Houston Pipe Line Co.....	Transcontinental Gas Pipe Line Corp.	11-10-86	C		
ST87-0408	Oasis Pipe Line Co.....	Trancontinental Gas Pipe Line Corp...	11-10-86	C		
ST87-0409	Northern Natural Gas Co.....	Pacific Gas and Electric Co.....	11-10-86	B		
ST87-0410	Northern Natural Gas Co.....	Delhi Gas Pipeline Corp.....	11-10-86	B		
ST87-0411	Northern Natural Gas Co.....	Enron Industrial Natural Gas Co.....	11-10-86	B		
ST87-0412	Northern Natural Gas Co.....	Iowa-Illinois Gas Co.....	11-10-86	B		
ST87-0413	Consolidated Gas Transmission Corp.	Niagara Mohawk Power Corp.....	11-10-86	B		
ST87-0414	Columbia Gulf Transmission Co.....	Texas Eastern Transmission Corp.....	11-10-86	G		
ST87-0415	Endevco Pipeline Co.....	El Paso Natural Gas Co.....	11-10-86	C		
ST87-0416	Gas Gathering Corp.....	Houston Oil & Minerals Corp.....	11-12-86	G-EU		
ST87-0417	Panhandle Eastern Pipe Line Co.....	Cimarron River-Quinque System.....	11-12-86	B		
ST87-0418	Panhandle Eastern Pipe Line Co.....	Indiana Gas Co.....	11-12-86	B		
ST87-0419	Panhandle Eastern Pipe Line Co.....	Consumers Power Co.....	11-12-86	B		
ST87-0420	Panhandle Eastern Pipe Line Co.....	Consumers Power Co.....	11-12-86	B		
ST87-0421	Panhandle Eastern Pipe Line Co.....	Consumers Power Co.....	11-12-86	B		
ST87-0422	Panhandle Eastern Pipe Line Co.....	Consumers Power Co.....	11-12-86	B		
ST87-0423	Panhandle Eastern Pipe Line Co.....	Consumers Power Co.....	11-12-86	B		
ST87-0424	Panhandle Eastern Pipe Line Co.....	Indiana Gas Co.....	11-12-86	B		
ST87-0425	Gas Gathering Corp.....	Cities Service Oil & Gas Corp.....	11-12-86	G-EU		
ST87-0426	Texas Gas Eastern Transmission Corp.	Peoples Gas & Power Co., Inc.....	11-12-86	B		
ST87-0427	Texas Gas Eastern Transmission Corp.	Midwest Natural Gas Corp.....	11-12-86	B		
ST87-0428	Texas Gas Eastern Transmission Corp.	Western Kentucky Gas Co.....	11-12-86	B		
ST87-0429	Texas Gas Eastern Transmission Corp.	Western Kentucky Gas Co.....	11-12-86	B		
ST87-0430	Acadian Gas Pipeline System.....	Bridgeline Gas Distribution Co.....	11-12-86	C		
ST87-0431	ONG Transmission Co.....	Northern Natural Gas Co.....	11-12-86	C	4-11-87	10.00
ST87-0432	Natural Gas Pipeline Co. of America...	Delhi Gas Pipeline Corp.....	11-12-86	B		
ST87-0433	Columbia Gulf Transmission Co.....	Alabama-Tennessee Natural Gas Co..	11-12-86	G		
ST87-0434	Colorado Interstate Gas Co.....	Battle Creek Co.....	11-12-86	B		
ST87-0435	Northern Natural Gas Co.....	Southern California Gas Co.....	11-12-86	B		
ST87-0436	Northern Natural Gas Co.....	Michigan Consolidated Gas Co.....	11-12-86	B		
ST87-0437	Transwestern Pipeline Co.....	Energas Co.....	11-12-86	B		
ST87-0438	Cranberry Pipeline Corp.....	Columbia Gas Transmission Corp.....	11-12-86	C	4-11-87	51.00
ST87-0439	ONG Transmission Co.....	Arkla Energy Resources.....	11-13-86	C	4-12-87	10.00
ST87-0440	ONG Transmission Co.....	Arkla Energy Resources.....	11-13-86	C	4-12-87	24.32
ST87-0441	United Gas Pipe Line Co.....	Transamerican Natural Gas Corp.....	11-13-86	B		
ST87-0442	United Gas Pipe Line Co.....	City of Greer.....	11-13-86	B		
ST87-0443	United Gas Pipe Line Co.....	City of Danville.....	11-13-86	B		
ST87-0444	United Gas Pipe Line Co.....	Stevens Utilities.....	11-14-86	B		
ST87-0445	United Gas Pipe Line Co.....	South Jersey Gas Co.....	11-13-86	B		
ST87-0446	Natural Gas Pipeline Co. of America...	North Shore Gas Co.....	11-13-86	B		
ST87-0447	Colorado Interstate Gas Co.....	Mgtc, Inc.....	11-13-86	B		
ST87-0448	United Gas Pipe Line Co.....	Niagara Mohawk Power Corp.....	11-13-86	B		
ST87-0449	Natural Gas Pipeline Co. of America...	Midven Pipeline Co.....	11-13-86	B		
ST87-0450	Natural Gas Pipeline Co. of America...	Northern Illinois Gas Co.....	11-13-86	B		
ST87-0451	United Gas Pipe Line Co.....	Baltimore Gas and Electric Co.....	11-13-86	B		
ST87-0452	Five Flags Pipe Line Co.....	Florida Gas Transmission Co.....	11-14-86	C		
ST87-0453	Northern Natural Gas Co.....	Apache Transmission Co.....	11-14-86	B		
ST87-0454	Northern Natural Gas Co.....	Northern States Power Co.....	11-14-86	B		
ST87-0455	United Gas Pipe Line Co.....	City of Lexington.....	11-14-86	B		
ST87-0456	United Gas Pipe Line Co.....	South Carolina Pipeline Corp.....	11-14-86	B		
ST87-0457	United Gas Pipe Line Co.....	Chattanooga Gas Co.....	11-14-86	B		
ST87-0458	United Gas Pipe Line Co.....	Alabama Gas Corp.....	11-14-86	B		
ST87-0459	United Gas Pipe Line Co.....	South Carolina Pipeline Corp.....	11-14-86	B		
ST87-0460	United Gas Pipe Line Co.....	West Ohio Gas Co.....	11-14-86	B		

Docket No. ¹	Transporter seller	Recipient	Date filed	Subpart	Expiration date ²	Transportation rate (?/MMBTU)
ST87-0461	United Gas Pipe Line Co	Atlanta Gas Light Co	11-14-86	B		
ST87-0462	United Gas Pipe Line Co	Chattanooga Gas Co	11-14-86	B		
ST87-0463	United Gas Pipe Line Co	Atlanta Gas Light Co	11-14-86	B		
ST87-0464	United Gas Pipe Line Co	Louisville Gas & Electric Co	11-14-86	B		
ST87-0465	United Gas Pipe Line Co	Alabama Gas Corp	11-14-86	B		
ST87-0466	Delhi Gas Pipeline Corp	ANR Pipeline Co	11-14-86	C	4-13-87	54.70
ST87-0467	United Gas Pipe Line Co	Union Gas Co	11-14-86	B		
ST87-0468	United Gas Pipe Line Co	Atlanta Gas Light Co	11-14-86	B		
ST87-0469	United Gas Pipe Line Co	Mississippi Valley Gas Co	11-14-86	B		
ST87-0470	United Gas Pipe Line Co	Hope Gas, Inc	11-14-86	B		
ST87-0471	United Gas Pipe Line Co	Michigan Consolidated Gas Co	11-14-86	B		
ST87-0472	United Gas Pipe Line Co	Eastex Gas Transmission	11-14-86	B		
ST87-0473	United Gas Pipe Line Co	Eastex Gas Transmission	11-14-86	B		
ST87-0474	United Gas Pipe Line Co	Willmut Oil & Gas Co	11-14-86	B		
ST87-0475	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	11-14-86	C	4-13-87	54.70
ST87-0476	Delhi Gas Pipeline Corp	Transcontinental Gas Pipe Line Corp.	11-14-86	C		
ST87-0477	Texas Eastern Transmission Corp	UGI Corp	11-14-86	B		
ST87-0478	Texas Eastern Transmission Corp	Mt. Carmel Public Utility Co	11-14-86	B		
ST87-0479	Texas Eastern Transmission Corp	East Ohio Gas Co	11-14-86	B		
ST87-0480	Texas Eastern Transmission Corp	Philadelphia Electric Co	11-14-86	B		
ST87-0481	United Gas Pipe Line Co	Western Kentucky Gas Co	11-17-86	B		
ST87-0482	United Gas Pipe Line Co	New Jersey Natural Gas Co	11-17-86	B		
ST87-0483	United Gas Pipe Line Co	City of Shelby	11-17-86	B		
ST87-0484	United Gas Pipe Line Co	Southeastern Michigan Gas Co	11-17-86	B		
ST87-0485	United Gas Pipe Line Co	Elizabethtown Gas Co	11-17-86	B		
ST87-0486	Houston Pipe Line Co	Northern Natural Gas Co	11-17-86	C		
ST87-0487	Houston Pipe Line Co	Northern Natural Gas Co	11-17-86	C		
ST87-0488	Panhandle Eastern Pipe Line Co	Missouri Public Service	11-17-86	B		
ST87-0489	Panhandle Gas Co	Connecticut Natural Gas Corp	11-17-86	D		
ST87-0490	Panhandle Gas Co	San Diego Gas & Electric Co	11-17-86	D		
ST87-0491	Panhandle Gas Co	Consolidated Edison Co. of Ny, Inc	11-17-86	D		
ST87-0492	Panhandle Gas Co	Utica Natural Gas System	11-17-86	D		
ST87-0493	Panhandle Gas Co	New Roads Gas System	11-17-86	D		
ST87-0494	Panhandle Gas Co	Chambersburg Gas Dept., Chambersburg, Pa.	11-17-86	D		
ST87-0495	Panhandle Gas Co	Smyrna Municipal Natural Gas Dept	11-17-86	D		
ST87-0496	United Gas Pipe Line Co	Victoria Gas Corp	11-17-86	B		
ST87-0497	United Gas Pipe Line Co	Niagara Mohawk Power Corp	11-17-86	B		
ST87-0498	United Gas Pipe Line Co	New Orleans Public Service, Inc.	11-17-86	B		
ST87-0499	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	11-17-86	B		
ST87-0500	Natural Gas Pipeline Co of America	Peoples Gas Light & Coke Co	11-17-86	B		
ST87-0501	El Paso Natural Gas Co	LLano, Inc	11-17-86	B		
ST87-0502	Northern Natural Gas Co	Southern California Gas Co	11-17-86	B		
ST87-0503	Northern Natural Gas Co	Iowa Public Service Co	11-17-86	B		
ST87-0504	United Gas Pipe Line Co	Peoples Natural Gas Co	11-17-86	B		
ST87-0505	United Gas Pipe Line Co	Houston Pipe Line Co	11-17-86	B		
ST87-0506	United Gas Pipe Line Co	Wellhead Ventures Corp	11-17-86	B		
ST87-0507	Nueces Co	Colorado Interstate Gas Co	11-17-86	C	4-16-87	78.87
ST87-0508	Consolidated Gas Transmission Corp.	East Ohio Gas Co	11-17-86	B		
ST87-0509	Consolidated Gas Transmission Corp.	New York State Electric and Gas Co.	11-17-86	B		
ST87-0510	Consolidated Gas Transmission Corp.	East Ohio Gas Co	11-17-86	B		
ST87-0511	Consolidated Gas Transmission Corp.	East Ohio Gas Co	11-17-86	B		
ST87-0512	Texas Eastern Transmission Corp	Indiana Gas Co	11-18-86	B		
ST87-0513	Texas Eastern Transmission Corp	Niagara Mohawk Power Corp	11-18-86	B		
ST87-0514	Texas Eastern Transmission Corp	Corning Natural Gas Corp	11-18-86	B		
ST87-0515	Texas Eastern Transmission Corp	Oxford Natural Gas Co	11-18-86	B		
ST87-0516	Texas Eastern Transmission Corp	Elizabethtown Gas Co	11-18-86	B		
ST87-0517	Texas Eastern Transmission Corp	Channel Industries Gas Co	11-18-86	B		
ST87-0518	El Paso Natural Gas Co	Southern Union Gas Co	11-18-86	B		
ST87-0519	Louisiana Intrastate Gas Corp	Trunkline Gas Co	11-19-86	C	4-18-87	22.40
ST87-0520	Louisiana Intrastate Gas Corp	Texas Eastern Transmission Corp	11-19-86	C	4-18-87	22.40
ST87-0521	Transcontinental Gas Pipe Line Corp.	Yankee Taft Co	11-19-86	B		
ST87-0522	Transcontinental Gas Pipe Line Corp.	South Carolina Pipeline Corp	11-19-86	B		

Docket No. ¹	Transporter seller	Recipient	Date filed	Subpart	Expiration date ²	Transportation rate (?/MMBTU)
ST87-0523	Transcontinental Gas Pipe Line Corp.	Public Service Electric and Gas Co.....	11-19-86	B		
ST87-0524	Transcontinental Gas Pipe Line Corp.	Atlanta Gas Light Co.....	11-19-86	B		
ST87-0525	Transcontinental Gas Pipe Line Corp.	City of Shelby.....	11-19-86	B		
ST87-0526	Transcontinental Gas Pipe Line Corp.	UGI Corp.....	11-19-86	B		
ST87-0527	Transcontinental Gas Pipe Line Corp.	Baltimore Gas and Electric Co.....	11-19-86	B		
ST87-0528	Transcontinental Gas Pipe Line Corp.	City of Union.....	11-19-86	B		
ST87-0529	Transcontinental Gas Pipe Line Corp.	Orange and Rockland Utilities, Inc.....	11-19-86	B		
ST87-0530	Texas Gas Transmission Corp.....	City of Dyersburg.....	11-19-86	B		
ST87-0531	United Gas Line Co.....	Delhi Gas Pipeline Corp.....	11-19-86	B		
ST87-0532	Texas Gas Transmission Corp.....	Western Kentucky Gas Co.....	11-19-86	B		
ST87-0533	Texas Gas Transmission Corp.....	Western Kentucky Gas Co.....	11-19-86	B		
ST87-0534	Texas Gas Transmission Corp.....	Memphis Light, Gas and Water Division.	11-19-86	B		
ST87-0535	Texas Gas Transmission Corp.....	Indiana Gas Co.....	11-19-86	B		
ST87-0536	Texas Gas Transmission Corp.....	Community Natural Gas Co., Inc.....	11-19-86	B		
ST87-0537	Texas Gas Transmission Corp.....	Louisville Gas & Electric Co.....	11-19-86	B		
ST87-0538	Texas Gas Transmission Corp.....	Town of Halls.....	11-19-86	B		
ST87-0539	Texas Gas Transmission Corp.....	Western Kentucky Gas Co.....	11-19-86	B		
ST87-0540	Texas Eastern Transmission Corp.....	Columbia Gas of Ohio, Inc.....	11-19-86	B		
ST87-0541	Texas Eastern Transmission Corp.....	Mountaineer Gas Co.....	11-19-86	B		
ST87-0542	Northern Natural Gas Co.....	Enron Gas Pipeline Co.....	11-19-86	B		
ST87-0543	Northern Natural Gas Co.....	Michigan Power Co.....	11-19-86	B		
ST87-0544	Texas Eastern Transmission Corp.....	Columbia Gas of Virginia, Inc.....	11-19-86	B		
ST87-0545	Texas Eastern Transmission Corp.....	Columbia Gas of New York, Inc.....	11-19-86	B		
ST87-0546	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0547	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0548	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0549	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0550	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0551	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0552	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0553	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0554	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0555	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0556	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0557	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0558	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0559	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0560	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0561	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0562	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0563	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0564	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0565	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0566	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0567	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0568	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0569	Arkla Energy Resources.....	Arkansas Louisiana Gas Co.....	11-19-86	B		
ST87-0570	Northern Natural Gas Co.....	Minnegasco, Inc.....	11-20-86	B		
ST87-0571	Colorado Interstate Gas Co.....	Public Service Co. of Colorado.....	11-20-86	B		
ST87-0572	El Paso Natural Gas Co.....	Pacific Gas and Electric Co.....	11-21-86	B		
ST87-0573	El Paso Natural Gas Co.....	Lland, Inc.....	11-21-86	B		
ST87-0574	Arkla Energy Resources.....	J-W Operating Co.....	11-21-86	B		
ST87-0575	Transcontinental Gas Pipe Line Corp.	Rockland Corp.....	11-21-86	B		
ST87-0576	Arkla Energy Resources.....	Liberty Natural Gas Co.....	11-21-86	B		
ST87-0577	Transcontinental Gas Pipe Line Corp.	Mississippi Valley Gas Co., Et Al.....	11-21-86	B		
ST87-0578	Transcontinental Gas Pipe Line Corp.	Atlanta Gas Light Co.....	11-21-86	B		
ST87-0579	Natural Gas Pipeline Co. of America...	Transok, Inc.....	11-21-86	B		
ST87-0580	Natural Gas Pipeline Co. of America...	Delhi Gas Pipeline Corp.....	11-21-86	B		
ST87-0581	Natural Gas Pipeline Co. of America...	Illinois Power Co.....	11-21-86	B		
ST87-0582	Natural Gas Pipeline Co. of America...	Peoples Gas Light & Coke Co.....	11-21-86	B		

Docket No. ¹	Transporter seller	Recipient	Date filed	Subpart	Expiration date ²	Transportation rate (?/MMBTU)
ST87-0583	Natural Gas Pipeline Co. of America...	Michigan Consolidated Gas Co., Et Al.	11-21-86	B		
ST87-0584	Natural Gas Pipeline Co. of America...	Northern Illinois Gas Co.....	11-21-86	B		
ST87-0585	Natural Gas Pipeline Co. of America...	Northern Illinois Gas Co.....	11-21-86	B		
ST87-0586	Northern Natural Gas Co.....	Michigan Power Co.....	11-21-86	B		
ST87-0587	Northern Natural Gas Co.....	NGC Intrastate Pipeline	11-21-86	B		
ST87-0588	Acadian Gas.....	Tennessee Gas Pipeline Co.....	11-21-86	C		
ST87-0589	Acadian Gas Pipeline System	Pontchartrain Natural Gas System	11-21-86	C		
ST87-0590	Columbia Gulf Transmission Co	Estex Gas Transmission	11-24-86	B		
ST87-0591	Transcontinental Gas Pipe Line Corp.	Pennsylvania Gas and Water Co.....	11-24-86	B		
ST87-0592	Transcontinental Gas Pipe Line Corp.	Baltimore Gas and Electric Co.....	11-24-86	B		
ST87-0593	Transcontinental Gas Pipe Line Corp.	Orange and Rockland Utilities, Inc.....	11-24-86	B		
ST87-0594	Superior Offshore Pipeline Co.....	Michigan Consolidated Gas Co., Et Al.	11-21-86	B		
ST87-0595	Transcontinental Gas Pipe Line Corp.	North Penn Gas Co.....	11-24-86	B		
ST87-0596	Transcontinental Gas Pipe Line Corp.	Atlanta Gas Light Co.....	11-24-86	B		
ST87-0597	Transcontinental Gas Pipe Line Corp.	Memphis Light, Gas and Water Division.	11-24-86	B		
ST87-0598	Transcontinental Gas Pipe Line Corp.	New Jersey Natural Gas Co.....	11-24-86	B		
ST87-0599	Transcontinental Gas Pipe Line Corp.	Estex Gas Transmission	11-24-86	B		
ST87-0600	Transcontinental Gas Pipe Line Corp.	Atlanta Gas Light Co.....	11-24-86	B		
ST87-0601	Transcontinental Gas Pipe Line Corp.	Channel Industries Gas Co.....	11-24-86	B		
ST87-0602	Transcontinental Gas Pipe Line Corp.	Philadelphia Electric Co.....	11-24-86	B		
ST87-0603	Transcontinental Gas Pipe Line Corp.	Channel Industries Gas Co.....	11-24-86	B		
ST87-0604	Transcontinental Gas Pipe Line Corp.	Brooklyn Union Gas Co.....	11-24-86	B		
ST87-0605	Transcontinental Gas Pipe Line Corp.	Long Island Lighting Co.....	11-24-86	B		
ST87-0606	Transcontinental Gas Pipe Line Corp.	North Central Public Service Co.....	11-24-86	B		
ST87-0607	Transcontinental Gas Pipe Line Corp.	Coastal States Gas Transmission Co.	11-24-86	B		
ST87-0608	Transcontinental Gas Pipe Line Corp.	Louisville Gas and Electric Co., et al.	11-24-86	B		
ST87-0609	Transcontinental Gas Pipe Line Corp.	City of Linden	11-24-86	B		
ST87-0610	Texas Gas Transmission Corp.....	Cincinnati Gas and Electric Co.....	11-24-86	B		
ST87-0611	Panhandle Gas Co.....	Elizabethtown Gas Co.....	11-25-86	D		
ST87-0612	Oasis Pipe Line Co.....	Humble Gas Transmission Co.....	11-25-86	C		
ST87-0613	Houston Pipe Line Co.....	Humble Gas Transmission Co.....	11-25-86	C		
ST87-0614	Houston Pipe Line Co.....	Elizabethtown Gas Co.....	11-25-86	C		
ST87-0615	Colorado Interstate Gas Co.....	Western Gas Supply Co.....	11-25-86	B		
ST87-0616	Columbia Gulf Transmission Co	Brooklyn Union Gas Co.....	11-25-86	B		
ST87-0617	Texas Eastern Transmission Corp.....	Elizabethtown Gas Co.....	11-26-86	B		
ST87-0618	Texas Eastern Transmission Corp.....	Midwest Natural Gas Corp.....	11-26-86	B		
ST87-0619	Texas Eastern Transmission Corp.....	Yankee Pipeline Co.....	11-26-86	B		
ST87-0620	Texas Eastern Transmission Corp.....	Batesville Water & Gas Utility	11-26-86	B		
ST87-0621	Texas Eastern Transmission Corp.....	Tennessee River Intrastate Gas Co.....	11-26-86	B		
ST87-0622	Panhandle Eastern Pipe Line Co.....	Citizens Gas and Coke Utility.....	11-26-86	B		
ST87-0623	Panhandle Eastern Pipe Line Co.....	Citizens Gas and Coke Utility.....	11-26-86	B		
ST87-0624	Panhandle Eastern Pipe Line Co.....	Citizens Gas and Coke Utility.....	11-26-86	B		
ST87-0625	Panhandle Eastern Pipe Line Co.....	Citizens Gas and Coke Utility.....	11-26-86	B		
ST87-0626	Panhandle Eastern Pipe Line Co.....	Citizens Gas and Coke Utility.....	11-26-86	B		
ST87-0627	Northern Natural Gas Co.....	Michigan Gas Utilities.....	11-26-86	B		
ST87-0628	Northern Natural Gas Co.....	Wisconsin Gas Co.....	11-26-86	B		
ST87-0629	Northern Natural Gas Co.....	Northern Illinois Gas Co.....	11-26-86	B		
ST87-0630	Northern Natural Gas Co.....	Indiana Gas Co.....	11-26-86	B		
ST87-0631	Panhandle Eastern Pipe Line Co.....	Citizens Gas and Coke Utility.....	11-26-86	B		
ST87-0632	Northern Natural Gas Co.....	Apache Transmission Co.....	11-26-86	B		
ST87-0633	Northern Natural Gas Co.....	Quivira Gas Co.....	11-26-86	B		

Docket No. ¹	Transporter seller	Recipient	Date filed	Subpart	Expiration date ²	Transportation rate (?/ MMBTU)
ST87-0634	Cabot Pipeline Corp	El Paso Natural Gas Co.....	11-26-86	C	4-25-87	54.00
ST87-0635	Panhandle Eastern Pipe Line Co.....	Citizens Gas and Coke Utility	11-26-86	B		
ST87-0636	Panhandle Eastern Pipe Line Co.....	Citizens Gas and Coke Utility	11-26-86	B		
ST87-0637	Panhandle Eastern Pipe Line Co.....	Citizens Gas and Coke Utility	11-26-86	B		
ST87-0638	Panhandle Eastern Pipe Line Co.....	Citizens Gas and Coke Utility	11-26-86	B		
ST87-0639	Panhandle Eastern Pipe Line Co.....	Citizens Gas and Coke Utility	11-26-86	B		
ST87-0640	Panhandle Eastern Pipe Line Co.....	Citizens Gas and Coke Utility	11-26-86	B		
ST87-0641	Panhandle Eastern Pipe Line Co.....	Michigan Power Co.....	11-26-86	B		
ST87-0642	Panhandle Eastern Pipe Line Co.....	Citizens Gas and Coke Utility	11-26-86	B		
ST87-0643	Panhandle Eastern Pipe Line Co.....	Citizens Gas and Coke Utility	11-26-86	B		
ST87-0644	Panhandle Eastern Pipe Line Co.....	Richmond Gas Corp.....	11-26-86	B		
ST87-0645	Panhandle Eastern Pipe Line Co.....	Citizens Gas and Coke Utility	11-26-86	B		
ST87-0646	Seagull Shoreline System.....	Texas Eastern Transmission Corp.....	11-28-86	C	4-27-87	30.00
ST87-0647	Monterey Pipeline Co.....	Humble Gas System, Inc.....	11-28-86	C	4-27-87	12.62

Below are two petitions for rate approval. They are noticed at this time to give interested parties the appropriate 150-day comment period

ST86-0948	ONG Transmission Co.....	Bridgeline Gas Distribution Co.....	11-10-86	C	04-09-87	12.00
ST86-1363	ONG Transmission Co.....	Peoples Natural Gas Co.....	11-10-86	C	04-09-87	12.00

¹ Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with Order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/18/85).

² The Intrastate pipeline has sought Commission approval of its transportation rate pursuant to section 284.123(B)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 87-4394 Filed 3-2-87; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearing and Appeals

Cases Filed Week of December 5 Through December 12, 1986

During the Week of December 5 through December 12, 1986, the appeals and applications for exception or other relief listed in the Appendix to this

Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of

the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,
Director, Office of Hearings and Appeals.
February 24, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Dec. 5 through Dec. 12, 1986]

Date	Name and Location of Applicant	Case No.	Type of Submission
Jan. 14, 1986	Kenneth Walker, Abilene, TX.....	KRZ-0052	Interlocutory. If granted: The Office of Hearings and Appeals would compel the Economic Regulatory Administration to collect and preserve all of the evidence sought by the respondent in the discovery requests in the Southwestern States Marketing, Inc. Proposed Remedial Order proceeding (Case No. HRO-0258).
Feb. 25, 1986	Bayport Refining Company, Austin, TX.....	KRZ-0056	Interlocutory. If granted: The Office of Hearings and Appeals would dismiss the Proposed Remedial Order issued to Bayport Refining, Inc. (Case No. HRO-0255) for failure to establish a prima facie case.
Feb. 25, 1986	Malcolm M. Turner, Austin, TX.....	KRZ-0053	Interlocutory. If granted: Malcolm Turner would be dismissed as a party in the Bayport Refining, Inc. proceeding (Case No. HRO-0255).
Feb. 25, 1986	Robert H. Houser, Austin, TX.....	KRZ-0054	Interlocutory. If granted: Robert Houser would be dismissed as a party in the Bayport Refining, Inc. proceeding (Case No. HRO-0255).
Feb. 25, 1986	Harry F. Mason, Austin, TX.....	KRZ-0055	Interlocutory. If granted: Harry Mason would be dismissed as a party in the Bayport Refining, Inc. proceeding (Case No. HRO-0255).
Dec. 8, 1986	Craft Oil Company, Orange, TX.....	KEE-0101	Exception to the reporting requirements. If granted: Craft Oil Company would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Products Sales Report."
Dec. 8, 1986	Taylor Oil Company, Blair, NE.....	KEE-0100	Exception to the reporting requirements. If granted: Taylor Oil Company would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Products Sales Report."
Dec. 9, 1986	APCO Liquidating Trust, Washington, DC.....	KEE-0103	Application for exception. If granted: APCO Liquidating Trust would no longer be required to retain company records pursuant to 10 CFR 210.1(b)(2)(i).
Dec. 9, 1986	S.D. Vanover, Adair, OK.....	KFA-0066	Appeal of an information request denial. If granted: The November 18, 1986 Freedom of Information Request Denial issued by the Office of the Inspector General would be rescinded, and S.D. Vanover would receive access to a copy of the Inspector General's investigation of the Southwestern Power Administration.
Dec. 9, 1986	State of Hawaii, Honolulu, HI.....	KEE-0102	Application for exception. If granted: The State of Hawaii would be granted an exception from the provisions of 10 CFR Part 455 that require buildings eligible for grants under the Institutional Conservation Program to be heated or cooled by mechanical means.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Dec. 5 through Dec. 12, 1986]

Date	Name and Location of Applicant	Case No.	Type of Submission
Dec. 9, 1986	Texaco, Inc., White Plains, NY	KRX-0024	Supplemental order. If granted: The Office of Hearings and Appeals would dismiss recalculated overcharges that were ordered in Texaco, Inc. (Case No. DRO-0199) and subsequently filed by the Economic Regulatory Administration on November 5, 1986.
Dec. 9, 1986	Texaco, Inc., White Plains, NY	KRX-0025	Supplemental order. If granted: An amended Proposed Remedial Order filed by the Economic Regulatory Administration on October 31, 1986 would be rescinded.
Dec. 11, 1986	Burt A. Braverman, Washington, DC	KFA-0067	Appeal of an information request denial. If granted: The November 10, 1986 Freedom of Information Request Denial issued by the Office of Procurement Operations would be rescinded, and Burt A. Braverman would receive access to a copy of the proposal submitted by Weirton Steel Corporation in response to the Program Opportunity Notice for the Clean Coal Technology Program.
Dec. 12, 1986	BHP Petroleum Co., Inc., Washington, DC	KEF-0086	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the October 23, 1986 Consent Order entered into with BHP Petroleum Co., Inc.
Dec. 12, 1986	Waldo Oil Company, Waldo, WI	KEE-0104	Exception to the reporting requirements. If granted: Waldo Oil Company would not be required to file Form EIA-782B, "Resellers/Retailers' Monthly Petroleum Product Sales Report."

REFUND APPLICATIONS RECEIVED

[Week of Dec. 5 to Dec. 12, 1986]

Date received	Name of refund proceeding/name of refund applicant	Case number
12/04/86	Amoco/Alabama	RQ251-341
12/05/86 to 12/12/86	Marathon refund applications	RF250-2515 through RF250-2652
12/05/86 to 12/12/86	Surface Transporters refund applications	RF270-1359 through RF270-2374
12/05/86 to 12/12/86	Rail & Water Transporters refund applications	RF271-142 through RF271-222
12/05/86 to 12/12/86	Crude Oil Overcharge refund applications	RF272-103 through RF272-221
12/05/86	Gulf States Oil	RF263-15
12/08/86	Penn Oil Company	RF40-3599
12/08/86	Don's Butane Service	RF40-3598
12/08/86	Eagle Oil Company	RF225-10472
12/08/86	Gross Mobil	RF225-10474
12/08/86	Lewis L P Gas, Inc.	RF26-55
04/04/86	Haessig's Service Station	RF225-10475
12/09/86	Landwhere Mobil	RF225-10476
12/09/86	Joseph Turse Mobil	RF225-10493
12/09/86	Joseph Turse Mobil	RF225-10494
12/09/86	Joseph Turse Mobil	RF225-10495
12/08/86	Lewis L P Gas, Inc.	RF139-163
12/08/86	Michael Patterson	RF276-7
12/08/86	Odessa L.P.G. Transport, Inc.	RF273-2
12/08/86	Hauck Oil Company	RF220-462
12/08/86	Rex Oil Company	RF220-463
12/08/86	Mitchell Oil Company	RF7-161
12/09/86	Hoover's, Inc.	RF265-47
12/09/86	Commercial Parking & Storage	RF40-3600
12/09/86	American Commercial Barge Line	RF40-3601
12/11/86	Gas-A-Matic System	RF259-15
12/11/86	American Airlines	RF269-7
12/11/86	Eco Oil, Inc.	RF7-162
12/11/86	C & I Fuel Co., Inc.	RF7-163
12/11/86	Fletcher Oil Co., Inc.	RF7-164
12/11/86	C.B. Stone, Inc.	RF7-165
12/11/86	Sculfin Oil Company	RF7-166

[FR Doc. 87-4434 Filed 3-2-87; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed Period of January 19 Through January 30, 1987

During the period of January 19 through January 30, 1987, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in

the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 24, 1987.

George B. Breznay,*Director, Office of Hearing and Appeals.**Concord Energy, Inc./Paul C. Elliott,**Houston, Texas; KRO-0420, crude oil*

On January 28, 1987, Concord Energy, Inc. and Paul C. Elliott of 10810 Oak Creek, Houston, Texas 77024 filed a Notice of Objection to a Proposed Remedial Order which the Houston office of the Economic Regulatory Administration (ERA) issued to them on December 30, 1986. The PRO alleges that, during the period June 1978 through December 1980, the firm violated 10 CFR 212.186, 10 CFR 205.202, and 10 CFR 210.62(c) and overcharged customers in resales of crude oil in the amount of \$3,019,224.04.

[FR Doc. 87-4435 Filed 3-2-87; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

Radio Advisory Committee Meeting Thursday, March 19, 1987

The General Services Administration has renewed the charter of the Advisory Committee on Radio Broadcasting through December 31, 1988.

The next meeting of the Advisory Committee on Radio Broadcasting will be held at 1:30 p.m., Thursday, March 19, 1987, at the Wasilewski Room, National Association of Broadcasters, 1771 N Street, NW., Washington, DC.

The Committee will consider:

- Possible improvements to the AM service through revisions to the AM Broadcast Rules. (See the staff Report to the Commission on this subject dated April 3, 1986;
- Developments in FM radio allocations;
- International matters affecting radio broadcasting; and
- Other Business.

The meetings of the Committee are public, and are open for participation by all interested persons. The meeting scheduled for March 19, 1987 may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information, please contact the Committee Chairman, Mr. Larry Eads, at FCC Headquarters. His telephone number is (202) 632-6485.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 87-4397 Filed 3-2-87; 8:45 am]

BILLING CODE 6712-01-M

900 MHz SMR Applications; Opening of Fourth Filing Window

AGENCY: Federal Communications Commission.

ACTION: Public notice.

SUMMARY: The Commission confirms that its fourth filing window for 900 MHz SMR applications will open on March 23, 1987 and close on March 27, 1987.

EFFECTIVE DATE: March 3, 1987.

FOR FURTHER INFORMATION CONTACT:

Harold Salters, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632-7597.

SUPPLEMENTARY INFORMATION:

Public Notice

900 MHz SMR Application Filing Window No. 4 To Be Open From March 23-27, 1987

The filing of applications for SMR facilities in the 900 MHz band for

window #4 will open on March 23, 1987 and close on March 27, 1987. During this fourth filing window, 900 MHz SMR applications will be accepted for facilities to serve the following Designated Filing Areas (DFAs):

- #32—Indianapolis
- #33—San Antonio
- #35—Charlotte, NC
- #36—Hartford
- #37—Salt Lake City
- #39—Louisville
- #40—Oklahoma City
- #41—Memphis
- #43—Birmingham, AL
- #44—Nashville
- #45—Greensboro, NC
- #46—Albany, NY
- #48—Honolulu
- #50—Jacksonville, FL

Applicants are reminded that tentative selectees in the Charlotte, NC DFA (#35) and the Greensboro, NC DFA (#45) must negotiate with each other as described in the November 4th Public Notice.

Applicants should follow the procedures for filing 900 MHz SMR applications as set forth in the Commission's Public Notices of November 4, 1986, entitled "Private Land Mobile Application Procedures for Spectrum in the 896-901 MHz and 935-940 MHz Bands," and December 30, 1986, entitled "900 MHz SMR Application Filing Window for Markets #6 Through #15 To Be Open From January 26-30, 1987." Both public notices were published in the *Federal Register*, 52 FR 1302 (January 12, 1987).

For further information, contact Harold Salters, (202) 632-7597.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 87-4398 Filed 3-2-87; 8:45 am]

BILLING CODE 6712-01-M

[File Nos. BPC-86052KP and BPCT-860728KL, MM Docket No. 86-441]

Applications for Consolidated Hearing; Garcia Communications and Sunshine Televisions, Inc.

The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, City, and State	File No.	MM Docket No.
A. Gracia Communications, Klamath Falls, OR.	BPCT-86-0527KP.....	86-441
B. Sunshine Television, Inc., Klamath Falls, OR.	BPCT-860728KL.....	86-441

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a

consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and applicant(s)

Air Hazard, B
Satellite, B
Comparative, A, B
Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW, Washington, DC 20037 (Telephone No. (202) 857-3800).

In re Applications of Garcia Communications Sunshine Television, Inc., for construction permit Klamath Falls, OR; MM Docket No. BPCT-860527KP, File No. 860728KL.

Hearing Designation Order

Adopted: October 31, 1986.

Released: November 20, 1986.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications to construct a new commercial television station on Channel 31, Klamath Falls, Oregon.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. No determination has been reached that the tower height and location proposed by Sunshine Television would

not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. On June 26, 1985, the Commission issued a Public Notice (Mimeo No. 5421) requiring all applicants for new broadcast stations that they have obtained reasonable assurance that their specified transmitter sites will be available to them. Garcia has submitted a certification with a facsimile signature. Accordingly, Garcia will be given 20 days from the date of release of this Order to file an original certification, in the form required by the Commission, with the presiding Administrative Law Judge.

5. Section 73.3555(a)(3) of the Commission's Rules provides that no license for a television broadcast station shall be granted to any party if such party directly or indirectly owns, operates, or controls one or more television broadcast stations and the grant of such license will result in any overlap of the Grade B contours of the existing and proposed stations. Note 5 to § 73.3555 states that "paragraphs (a) through (d) of this section will not be applied to cases involving television stations which are primarily 'satellite' operations, and such cases will be considered on a case-by-case basis in order to determine whether common ownership, operation, or control of the stations in question would be in the public interest." Sunshine is the licensee of station KDRV(TV), Medford, Oregon, and intends to operate the Klamath Falls station as a satellite of KDRV(TV). The predicted Grade B contours of the proposed television station and the licensed station would overlap. Garcia, however, apparently believes that the community can support a full-service station. In the past, we would have ordinarily specified an issue to determine the need for the satellite operation. In this case, however, the commission has previously authorized a satellite, and given the small size of the market,¹ the need for a satellite would usually be presumed. See *Capitol Broadcasting Co.*, 54 R.R. 2d 811, 814 (1983). In these circumstances, the justification of a separate issue on the need for a satellite is not apparent. Instead, the applicants may introduce evidence as to the relative merits of their satellite and conventional proposals under the standard comparative issue.

6. Except as indicated by the issues specified below, the applicants are

qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are *Designated For Hearing In a Consolidated Proceeding*, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Sunshine Television, Inc., whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

2. To determine, which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. *It Is Further Ordered*, That Garcia communications shall file an original site availability certification, in the form required by the Commission, to the presiding Administrative Law Judge within 20 days after the release of this Order.

9. *It Is Further Ordered*, That the Federal Aviation Administration *Is Made a Party Respondent* to the proceeding with respect to issue 1.

10. *It Is Further Ordered*, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

11. *It Is Further Ordered*, That the applicants herein shall, pursuant to Section 311 (a) (2) of the Communications Act 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart, Chief,
Video Services Division, Mass Media Bureau.
[FR Doc. 87-4399 Filed 3-2-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Fee Charge System for Flood Maps

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of intent.

SUMMARY: This notice of intent advises that the Federal Insurance Administration intends to implement a fee charge system for flood maps distributed to the general public beginning on October 1, 1987. The effort contributes toward making the National Flood Insurance Program self-supporting by 1988.

DATE: Comments must be received on or before April 30, 1987.

ADDRESS: Comments should be mailed to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Brian R. Mrazik, Assistant Administrator, Office of Risk Assessment, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, Telephone (202) 646-2769.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program was enacted in 1968 to make flood insurance available in participating communities throughout the nation. Flood maps delineating flood hazard areas have been prepared for individual flood-prone communities by the Federal Insurance Administration. The maps are used by Federal, State and local governments and the private sector. Private sector users consist primarily of insurance agents, lenders, appraisers, real estate agents, engineers, builders, developers and individuals.

Since 1968, the Federal Insurance Administration has made the maps available free of charge. As the program has grown, costs associated with printing, storage and distribution of flood maps have increased significantly and are approaching \$4.5 million annually.

The Federal Insurance Administration has decided to implement measures to reduce the amount of monies currently being expended for these operations. It is proposed to assess a map fee charge

¹ Klamath Falls is a part of the Medford market, which is ranked 155th by Arbitron. *Television & Cable Factbook*, 1986 edition, page A-3. If Klamath Falls were considered a separate market, it would be ranked significantly lower.

effective October 1, 1987 to those organizations and individuals not directly involved with implementation of the National Flood Insurance Program. Under this proposal, all entities *except* Federal, State and local governments, lending institutions, insurance agents, insurance brokers, and Writer Your Own companies, would be charged for maps.

The proposed fee is \$5.00 per order up to 10 map panels and \$.60 for each additional map panel. This fee schedule includes the postage cost. A one panel community map would cost a total of \$5.00 whereas a community whose map consists of 100 panels would cost \$59.00. The average map order is currently 14 panels and would cost \$7.40.

Fee payments will be required in advance of the shipments. The proposed payment mechanisms are as follows: establishment of a cash account, or prepayment for an individual order by check or money order, or use a Visa or Master Card credit card.

Anyone who has an interest in the fee charge system should provide their comments in accordance with the date and address listed above.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-4088 Filed 3-2-87; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations; Associated Forwarders, Inc. et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.: 2376

Name: Associated Forwarders, Inc.
Address: 1000 ITM Bldg., New Orleans, LA 70130

Date Revoked: December 30, 1986

Reason: Requested revocation voluntarily

License No.: 2589

Name: Accelerated Customs Brokers, Inc.
Address: 9310 Bellanca Avenue, Los Angeles, CA 90045

Date Revoked: January 20, 1987

Reason: Surrendered license voluntarily
License No.: 1920

Name: IFC Corporation and IFC Corporation dba International IFC Corporation
Address: 12333 S. Latrobe, Chicago, IL 60658

Date Revoked: January 28, 1987

Reason: Failed to maintain a valid surety bond

License No.: 2772

Name: Paralia, Inc. dba Paralia Corporation
Address: 80 Broad Street, Boston, MA 02110

Date Revoked: February 4, 1987

Reason: Failed to maintain a valid surety bond

License No.: 1215

Name: Ingham International, Inc.
Address: 7550 24th Ave. So., #166, Minneapolis, MN 55450

Date Revoked: February 5, 1987

Reason: Failed to maintain a valid surety bond

License No.: 2799

Name: Denver Moving & Storage, Inc., DMS International Division
Address: 2133 South Wabash St., Denver, CO 80231

Date Revoked: February 7, 1987

Reason: Failed to maintain a valid surety bond

License No.: 1522

Name: Inter-Hemisphere Service Co., Inc.
Address: 482 Manor Rd., Staten Island, NY 10314

Date Revoked: February 10, 1987

Reason: Failed to maintain a valid surety bond

License No.: 1191

Name: Tuya International Corporation
Address: 1351 N.W. 78th Avenue, Miami, FL 33126

Date Revoked: February 17, 1987

Reason: Requested revocation voluntarily.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 87-4360 Filed 3-2-87; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 87-2]

Investigation of Rebates and Other Malpractices; Yangming Marine Line, a.k.a. Yangming Marine Transport Corporation and Yang Ming Line; Order

This proceeding is instituted pursuant to sections 10, 11 and 13 of the Shipping Act of 1984, 46 U.S.C. app. 1709, 1710 and 1712, and sections 16, 18, 22 and 32 of the Shipping Act, 1916, 46 U.S.C. app. 815, 817, 821 and 831.

Yangming Marine Line (also known as Yangming Marine Transport

Corporation and Yang Ming Line, hereafter YML) is an ocean common carrier domiciled in Taiwan which operates in the trades between the Far East and the United States.

It appears that during the period since January 1, 1983, YML may have paid rebates to certain Taiwanese consignees and committed other malpractices in connection with shipments of cotton from the United States. It further appears that during this period YML may have participated in an arrangement with others to pay expenses incurred by certain YML shippers or consignees of commodities other than cotton (e.g., beet pulp pellets, meat and bone meal, and corn gluten meal). This arrangement also may have been used to camouflage payments for malpractices committed by YML.

Accordingly, it appears that during the period since January 1, 1983, YML may have violated sections 10(b) (1)-(4), (6) (A), (8), (10) and (11) of the Shipping Act of 1984 and sections 16 First and Second and 18(b)(3) of the Shipping Act, 1916.

Now therefore it is ordered, That pursuant to sections 10, 11 and 13 of the Shipping Act of 1984 and sections 16, 18, 22 and 32 of the Shipping Act, 1916, an investigation into the activities of YML in the Federal Register/Taiwan trade during the period since January 1, 1983, is instituted to determine the following:

1. Whether YML violated sections 10(b)(1)-(4), (6) (A), (8), (10) and (11) of the Shipping Act of 1984 and sections 16 First and Second and 18(b)(3) of the Shipping Act, 1916, by charging, demanding, collecting or receiving different compensation for the transportation of property and for services rendered in connection therewith than the rates and charges shown in its tariffs and service contracts; rebating, refunding or remitting a portion of its rates in a manner not in accordance with its tariffs and service contracts; extending privileges, concessions, equipment or facilities in a manner not in accordance with its tariffs or service contracts; allowing persons to obtain transportation for property at less than the rates and charges established in its tariffs or service contracts by unjust and unfair devices and means; engaging in unfair or unjustly discriminatory practices in the matter of rates; offering or paying deferred rebates; demanding, charging or collecting rates and charges that were unjustly discriminatory between shippers; and by giving unreasonable preferences and advantages to any particular person or description of traffic.

2. In the event YML is found to have violated any of the above-cited provisions, whether civil penalties should be assessed, and, if so, the amount of such penalties; and

3. What other remedial action should be taken, including but not limited to cease and desist orders and suspension and cancellation of tariffs.

It is further ordered, That a public hearing be held in this proceeding and that the matter be assigned for hearing before an Administrative Law Judge, of the Commission's Office of Administrative Law Judges, at a date and place to be hereafter determined by the Administrative Law Judge, in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61;

It is further ordered, That YML is designated Respondent in this proceeding;

It is further ordered, That the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the *Federal Register*, and a copy be served on parties designated herein;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all future notices, orders, and decisions issued in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record.

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record;

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the presiding officer in this proceeding shall be issued by May 25, 1988, and the final decision of the Commission shall be issued by September 26, 1988.

By the Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 87-4359 Filed 3-2-87; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0003]

E.I. du Pont de Nemours and Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that E.I. du Pont de Nemours & Co., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a polymer manufactured by the condensation of hexamethylenediamine, terephthalic acid and isophthalic acid for food-contact applications.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B3982) has been filed by E.I. du Pont de Nemours & Co., Wilmington, DE 19898, proposing that § 177.1500 *Nylon resins* (21 CFR 177.1500) be amended to provide for the safe use of a polymer manufactured by the condensation of hexamethylenediamine, terephthalic acid and isophthalic acid for food-contact applications.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Dated February 9, 1987.

Richard J. Ronk,
Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-4346 Filed 3-2-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0507]

Radiation Technology, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Radiation Technology, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a source of gamma radiation to irradiate poultry for the purpose of extending shelf-life and reducing the risk of salmonella poisoning.

FOR FURTHER INFORMATION CONTACT: Clyde A. Takeguchi, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8M3422) has been filed by Radiation Technology, Inc., 108 Lake Denmark Rd., Rockaway, NJ 07866, proposing that § 179.26 *Ionizing radiation for the treatment of food* (21 CFR 179.26) be amended to provide for the safe use of a source of gamma radiation to irradiate poultry for the purpose of extending shelf-life and reducing the risk of salmonella poisoning.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Dated: February 9, 1987.

Richard J. Ronk,
Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-4347 Filed 3-2-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87M-0027]

Belersdorf Inc.; Premarket Approval of Implast® Bone Cement

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Belersdorf, Inc., Norwalk, CT, for premarket approval, under the Medical Device Amendments of 1976, of the Implast® Bone Cement. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological

Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by April 2, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas J. Callahan, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7156.

SUPPLEMENTARY INFORMATION: On April 23, 1986, Beiersdorf, Inc., Norwalk, CT 06858-5529, submitted to CDRH an application for premarket approval of the Implast® Bone Cement. Implast Bone Cement is indicated for use in arthroplastic procedures of the hip, knee, and other joints, for the fixation of plastic and metal prostheses to living bone in orthopedic musculoskeletal surgical procedures for osteoarthritis, rheumatoid arthritis, traumatic arthritis, avascular necrosis, nonunion of fractures of the neck of the femur, sickle cell anemia, collagen disease, osteoporosis, severe joint destruction secondary to trauma, or other conditions, to fix unstable fractures in individuals with metastatic malignancies, and revisions of previous arthroplasty procedures.

On October 31, 1986, the Orthopedic and Rehabilitation Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On January 16, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Thomas J. Callahan (HFZ-410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360(g)), for administrative review of

CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 2, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 20, 1987.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87-4345 Filed 3-2-87; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Institute on Aging; Notice of Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the National Institute on Aging.

These meetings will be open to the public to discuss administrative details for approximately one-half hour at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Building 31, Room 5C05, National Institutes of Health, Bethesda, Maryland, 20892, (301/496-9322), will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Geriatrics Review Committee

Executive Secretary: Dr. Marvin Kalt, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496-9666

Dates of Meeting: March 11-12, 1987

Place of Meeting: National Institutes of Health, Building 31C, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892

Open: March 11, 8:30 a.m. to 9:00 a.m.

Closed: March 11, 9:00 a.m. to recess,

March 12, 8:30 a.m. to adjournment

Name of Committee: Aging Review Committee A

Executive Secretary: Dr. Walter Spieth, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland, 20892, Phone: 301/496-9666

Date of Meeting: March 18-19, 1987

Place of Meeting: National Institutes of Health, Building 31C, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892

Open: March 18, 8:30 a.m. to 9:00 a.m.

Closed: March 18, 9:00 a.m. to recess,

March 19, 8:30 a.m. to adjournment

Name of Committee: Aging Review Committee B

Executive Secretary: Dr. Marvin Kalt, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496-9666

Dates of Meeting: National Institutes of Health, Building 31C, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892

Open: March 19, 8:30 a.m. to 9:00 a.m.

Closed: March 19, 8:30 a.m. to recess,

March 20, 8:30 a.m. to adjournment

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: February 25, 1987.

William F. Raub,

Deputy Director, NIH.

[FR Doc. 87-4344 Filed 3-2-87; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Intent To Issue an Exclusive Patent License; Duke University

Pursuant to § 6.3 of 45 CFR, Part 6 and 37 CFR Part 404, notice is hereby given of intent to grant to Duke University an exclusive license to make, use, and sell an invention by Paul L. Modrich and Soo-Chen Cheng, entitled, "Construction and Characterization of a Strain or Recombinant Which Overproduces EcoRI Endonuclease and Methylase," which is described and claimed in Application for Letters Patent of the United States Serial No. 527,490, filed August 29, 1983. A copy of the patent application may be obtained upon written request submitted to Mr. Leroy B. Randall, Chief, Patent Branch, Department of Health and Human Services, c/o National Institutes of Health, Room 5A03, Westwood Building, Bethesda, Maryland 20892.

The proposed license will have a duration of five (5) years, may be royalty-bearing, and will contain other terms and conditions to be negotiated by the parties in accordance with the Department of Health and Human Services Patent Regulations. The Department will grant the license unless, within sixty (60) days of this Notice, the Chief of the Patent Branch named hereinabove, receives in writing any of the following, together with supporting documents:

1. A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

2. An application for a nonexclusive license to manufacture and/or sell the invention in the United States is submitted in accordance with the provisions of 37 CFR 404.8 and the applicant provides evidence that he has already brought the invention to practical application or is likely to do so expeditiously.

The Assistant Secretary for Health of the Department of Health and Human Services will review all written responses to this Notice.

Authority: 45 CFR 6.3 and 37 CFR 404.7.

Dated: February 18, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87-4362 Filed 3-2-87; 8:45 am]

BILLING CODE 4110-12-M

Food and Drug Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent parts at 48 FR 54129, November 30, 1983) is amended to reflect organizational changes in the Food and Drug Administration (FDA), Center for Devices and Radiological Health (CDRH).

The changes include establishing a new Office of Information Systems (OIS) and retitling the Office of Management and Systems to the Office of Management Services. The new OIS is being created in order to emphasize the area of information resources management in line with FDA Action Plan initiatives. OIS will consist of information management and systems functions transferred from the Office of Management and Systems. Administrative and management functions will continue to be carried out by the newly retitled Office of Management Services.

Section HF-B, *Organization and Functions* is amended as follows:

1. Delete subparagraph (o-1-i), *Office of Management and Systems (HFW11)*, in its entirety and insert a new subparagraph (o-1-i) *Office of Management Services (HFW11)* reading as follows:

(o-1-i) *Office of Management Services (HFW11)*. Advises the Center Director on all administrative and management matters.

Plans, develops, and implements Center management policies and programs concerning equal employment opportunity, manpower management, financial management, personnel management, contracts and grants management, employee development and training, occupational safety, organization, management analysis, and general office services support.

Develops and implements the Center's long-range, strategic, and operational plans.

Develops and applies evaluation techniques to measure the effectiveness of Center programs.

Provides general information and technical publication services to the Center.

Plans, conducts, and coordinates all of the Center's committee management activities.

Coordinates and supports the Center's cooperative activities with foreign government counterparts and international health organizations.

(o-1-IA) *Office of the Director (HFW11)*. Provides leadership and direction for the Office of Management Services.

Advises the Center Director in regard to all administrative and management matters and plans, and develops and implements the Center management policies.

Provides administrative and management support including budget, planning, personnel, procurement, and other related functions for the Office of Management Services, the Office of Health Physics, and the Office of the Center Director.

Provides management consulting services to CDRH management.

Provides for post-award review and monitoring of research grants and contracts. Manages the Center's grant awards program. Coordinates the review of unsolicited proposals.

Plans and coordinates the equal employment opportunity program. Develops policies and procedures for affirmative action plans. Monitors progress toward established objectives and recommends corrective action as appropriate.

2. Insert a new subparagraph (o-1-v), *Office of Information Systems (HFW15)* reading as follows:

(o-1-v) *Office of Information Systems (HFW15)*. Determines and implements Center strategy and utilization of information management resources.

Designs administrative and scientific/technical information systems in support of Center programs.

Provides assistance to Center staff in accessing information necessary to carry out the Center's mission.

(o-1-vA) *Office of the Director (HFW15)*. Coordinates Center plans and services for information management. Provides administrative support for Office components.

Effective Date: February 20, 1987.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 87-4361 Filed 3-2-87; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

Redelegations of Authorities for Administration of the Vocational Rehabilitation Program

Sections 222(d) and 1615(d) of the Social Security Act, as amended (the Act), contain the provisions for reimbursement of those providing vocational rehabilitation (VR) services to individuals receiving disability insurance benefits under title II of the Act and/or Supplemental Security Income disability/blindness benefits under title XVI of the Act. These services may be provided by States, through State agencies, or by alternate participants, such as other public or private agencies, organizations, institutions, or individuals.

A State which has a State plan for VR services approved under title I of the Rehabilitation Act of 1973 may participate in the VR program by notifying the Social Security Administration (SSA) in writing of its decision to participate. Where States do not participate, alternate participants may be used. To participate in the VR program, alternate participants are required to enter into a formal agreement or contract with SSA which reflects a VR plan similar to a State plan under title I of the Rehabilitation Act of 1973.

Previously, sections 222(d) and 1615(d) of the Act required the Secretary of Health and Human Services to allocate funds to providers of VR services for costs incurred by them in rehabilitation attempts. Funds authorized each year under these provisions were disbursed by the Rehabilitation Services Administration (RSA), Department of Education. The funds are distributed through RSA's grants system, using various allocation formulas, whether or not the VR services provided were successful.

However, sections 222(d) and 1615(d) of the Act have been amended by sections 2209 and 2344 of the Public Law (Pub. L.) 97-35, and section 11 of Pub. L. 98-460. As amended, these sections now provide that the Commissioner of Social Security (the Commissioner) shall make VR payments to States and alternate participants only if certain conditions are met. Where the VR services are determined to be successful, according to SSA criteria, they are reimbursable. If the services are less than successful, they are also reimbursable, under the law, (1) if the disabled individual received benefits under sections 225(b) or 1631(a)(6) of the Act (which provide

for continuation of disability benefit payments during VR despite medical recovery), or (2) if the disabled individual, without good cause, refused to continue to accept VR services, or failed to cooperate in such a manner as to preclude his/her successful rehabilitation.

To obtain reimbursement for VR services they provide, States and alternate participants must file claims with SSA. These claims are reviewed by SSA personnel to determine if the VR services are reimbursable and, if so, the amount of reimbursement. Where providers of VR services are dissatisfied with these determinations, they may request reconsideration. The initial determinations are then reviewed by different SSA personnel, who make reconsideration determinations.

Notice is hereby given that the Commissioner has approved the following redelegations of authorities to SSA positions for administration of the above VR program provisions:

Authorities

1. Authority to accept documents from States concerning their participation/nonparticipation in the VR program, and authority to declare a State unwilling to participate in the VR program, under sections 222(d) and 1615(d) of the Act, 20 Code of Federal Regulations (CFR) 404.2104(a)-(e), and 20 CFR 416.2204(a)-(e).

2. Authority to negotiate, approve (sign), modify, and terminate agreements or contracts with alternate participants, where States do not participate in the VR program, under sections 222(d) and 1615(d) of the Act, 20 CFR 404.2104(f), and 20 CFR 416.2204(f).

3. Authority to determine whether VR services provided by a State or alternate participant are reimbursable, and authority to determine and authorize payment of proper amount of reimbursement, under sections 222(d) and 1615(d) of the Act, 20 CFR 404.2108-404.2109, and 20 CFR 416.2208-416.2209.

4. Authority to review initial determinations made under the provisions of authority 3. above, and authority to make reconsideration determinations, under 20 CFR 404.2117, 404.2127, 416.2217, and 416.2227.

Delegates and Scope of Authority

a. Deputy Commissioner for Programs and b. Associate Commissioner and Deputy Associate Commissioner for Disability
a. and b. Authorities 1. and 2. for situations involving unusual sensitivity, precedent-setting features, or other special considerations, as determined by the

Regional Commissioner having original jurisdiction

c. Regional Commissioners and Deputy Regional Commissioners

c. Authorities 1. and 2. for situations within their respective jurisdiction, unless, in a particular case, the Regional Commissioner determines that special considerations require the applicable authority to be exercised by the Deputy Commissioner for Programs, or the Associate Commissioner/Deputy Associate Commissioner for Disability
d. Reimbursement Review Clerks, Vocational Rehabilitation Branch, Division of Vocational Rehabilitation and Special Programs (DVRSP), Office of Disability (OD)

d. Authority 3.

e. Social Insurance Specialists, DVRSP, OD

e. Authorities 3. and 4.

f. All OD positions in the direct line of management above the positions listed in items d. and e. above

f. Authorities 3. and 4.

Conditions

(1) Further redelegations are not authorized.

(2) The above authorities must be exercised in accordance with all pertinent provisions of law, regulations, SSA criteria, and operating instructions.

These redelegations are effective on the date they are published in the **Federal Register**. I affirm and ratify any actions by the above delegates which constitute the exercise of any of the subject authorities before that date.

Dated: February 17, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc. 87-4379 Filed 3-2-87; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket N-87-1679; FR-2177]

Pet Ownership in Housing for the Elderly or Handicapped; Pet Deposit Limitation; Announcement of Effective Date

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of announcement of effective date.

SUMMARY: This notice announces the effective date of FR-2177-Pet Ownership

in Housing for the Elderly or Handicapped; Notice of Pet Deposit Limitation, published December 1, 1986 (51 FR 43306).

DATE: March 2, 1987.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 7th Street, SW., Washington, DC 20410. Telephone No. (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 1, 1986, the Department published a final rule in FR-1936—Pet Ownership in Assisted Housing for the Elderly or Handicapped (51 FR 43270) and a related notice in FR-2177—Pet Ownership in Assisted Housing for the Elderly or Handicapped; notice of Pet Deposit Limitation (51 FR 43306). Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), the final rule could not become effective until the first period of 30 calendar days of continuous session of Congress occurring after the rule's publication. Accordingly, HUD stated that it would publish a notice of the effective date of the final rule and of the notice of pet deposit limitation following the expiration of the 30-session day waiting period. HUD also stated that whether or not the statutory waiting period had expired, the rule and the notice of pet deposit limitation would not become effective until a separate notice was published announcing effective dates.

Thirty calendar days of continuous session of Congress will expire for the present Congress on March 2, 1987. On February 6, 1987 (52 FR 3794), HUD published a notice announcing that the final rule would become effective on March 2, 1987. The notice, however, did not announce an effective date for the notice of pet deposit limitation. Accordingly, HUD announces that the effective date for Pet Ownership in Assisted Housing for the Elderly or Handicapped; Notice of Pet Deposit Limitation, published December 1, 1986 (51 FR 43306), Docket No. R. 86-1587; FR 2177 is March 2, 1987.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535 (d)).

Dated: February 26, 1987.

Grady J. Norris,
Assistant General Counsel for Regulations.
[FR Doc. 87-4402 Filed 3-2-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-040-07-4410-08]

Draft Resource Management Plan/ Environmental Impact Statement for the Pinedale Resource Area, Rock Springs District, WY

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of the draft Pinedale resource management plan/environmental impact statement (RMP/EIS).

SUMMARY: The Draft Pinedale RMP/EIS describes and analyzes future options for managing 931,000 acres of public land and 1,185,000 acres of Federal mineral estate administered by the Bureau of Land Management's Pinedale Resource Area in portions of Lincoln and Sublette Counties in southwest Wyoming.

The Draft RMP/EIS analyzes four comprehensive alternatives, including the Bureau's Preferred Alternative, for managing and allocating public land and resource uses within the Pinedale Resource Area. Any of the alternatives could be chosen as the proposed management for the Pinedale Resource Area and each would provide for realistic management of the public lands. Management prescriptions are presented for the following resources: Minerals (mostly oil and gas), watershed values, wildlife, livestock grazing, wild horses, forest resources, cultural values, and recreation (including off-road vehicles). This document also includes alternatives for grazing management within the Pinedale Resource Area.

DATES: Written comments on the Draft RMP/EIS will be accepted for 90 days following the date the Environmental Protection Agency publishes the notice of filing of the draft in the Federal Register. Open houses will be held in LaBarge on April 1, 1987, at the LaBarge Town Hall from 3 p.m. to 9 p.m., in Big Piney on April 2, 1987, at the Big Piney Fire Hall from 3 p.m. to 9 p.m., and in Pinedale on April 7, 1987, at the Pinedale Middle School Media Center from 4 p.m. to 9 p.m. A hearing will be held to accept oral and written comments, for the record, in Pinedale on April 29, 1987, at 7 p.m. at the Pinedale Middle School Media Center. Testimony will be limited to ten minutes with written submissions invited at the hearing. Participants may register prior to the hearing by submitting such requests in writing to the address below, and participants may

also register at the hearing registration desk prior to the hearing.

ADDRESSES: Written comments on the document should be addressed to: Team Leader, Pinedale RMP, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869.

FOR FURTHER INFORMATION CONTACT: Renee Dana, RMP/EIS Team Leader, in the Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, phone (307) 382-5350, or DeLon Potter, Pinedale Resource Area Manager in the Pinedale Resource Area Office, P.O. Box 768, Pinedale, Wyoming 82941, phone (307) 367-4358. A limited number of copies of the Draft Pinedale RMP/EIS are available at both these locations.

SUPPLEMENTARY INFORMATION: The Draft Pinedale RMP/EIS is primarily focused on resolving four key resource management issues that were identified with public involvement early in the planning process. The issues identified were: (1) Conflicts between surface disturbing development activities and other land and resource uses, and the identification of areas that are suitable or unsuitable for development activities, (2) adequacy of land and resource accessibility and manageability and the identification of access needs and public lands that are suitable for disposal, (3) conflicts between consumptive and nonconsumptive resource uses and the identification of lands where activities, such as timber harvesting and livestock grazing, are acceptable and compatible with other resource uses, and (4) conflicts between off-road vehicle (ORV) use and other land and resource uses and identification of ORV use areas and other recreation facility needs.

Management of wilderness values is not addressed in this RMP/EIS. The two wilderness study areas (WSAs) within the Pinedale Resource Area (Scab Creek WSA and Lake Mountain WSA) are addressed in the Draft Scab Creek Wilderness Suitability Report and EIS, December 1981, and the Rock Springs District Wilderness EIS, February 1983.

The Draft RMP/EIS recommends the designation of about 3,458 acres of BLM administered public surface and Federal mineral estate within the Beaver Creek area as the Beaver Creek Area of Critical Environmental Concern (ACEC). Within the boundaries of the ACEC are lands with privately owned surface. The designation of the ACEC would pertain to the surface and mineral estate managed by the BLM and the BLM-administered federal mineral estate under private lands. The non-BLM

administered surface would not be affected by the designation of the ACEC.

In designating the Beaver Creek ACEC, management prescriptions for the area optimize fisheries and wildlife opportunities over other resource concerns, due to the sensitivity and national importance of the Colorado River cutthroat trout. Management prescriptions for the area vary and are described and analyzed in the ACEC management sections of the Draft RMP/EIS. Limitations proposed for management of the ACEC include restricting, but not precluding, stream crossings, surface disturbing activities, timber harvest, and limiting ORV activity to existing roads and trails. Such activities would be allowed provided Colorado River cutthroat trout habitat would not be adversely affected.

The Rock Creek ACEC would remain a designated ACEC. The Rock Creek area was originally designated in 1982 to protect Colorado River cutthroat trout habitat. Limitations in this area include no surface occupancy for surface disturbing activities, a proposed withdrawal from locatable minerals in the Rock Creek Drainage, restricted timber harvest, and an ORV closure.

Public participation has occurred throughout the RMP process. A Notice of Intent was filed in the *Federal Register* in September 1983. Since that time, several open houses and mailouts were conducted to solicit comments and ideas from the public. Any comments presented throughout the process have been considered.

This notice meets the requirements of 43 CFR 1610.7-2 for designation of ACECs.

Hillary A. Oden,

State Director, Wyoming.

[FR Doc. 87-4340 Filed 3-2-87; 8:45 am]

BILLING CODE 4310-22-M

[MT-020-06-4121-09]

Intent To Prepare a Supplemental Environmental Impact Statement; Montana

AGENCY: Bureau of Land Management, Miles City District Office.

ACTION: Notice of Intent to prepare a supplemental environmental impact statement of the social, economic and cultural effects on the Northern Cheyenne and Crow Indians from past and proposed leasing of nearby federal coal reserves in the Powder River coal region of southeastern Montana.

SUMMARY: As directed by court order in Federal District Court, Billings,

Montana, the Bureau of Land Management (BLM) is preparing a supplemental environmental impact statement (EIS) to examine possible social, economic and cultural impacts of federal coal leasing on the Northern Cheyenne tribe in southeastern Montana. This EIS will supplement the December 1981 Powder River Final Environmental Impact Statement. Although the supplemental EIS will focus on the Northern Cheyenne tribe, the Crow tribe will be included in the analysis of possible impacts.

SUPPLEMENTARY INFORMATION: The alternatives to be analyzed in the EIS will parallel, to the extent feasible, the alternatives contained in the December 1981 Final Powder River Coal EIS. The no new federal leasing alternative will also be analyzed.

The BLM is the lead agency preparing the EIS, and the Miles City District Manager is the administrative lead for this EIS. Other agencies will be contacted for their advice and assistance. The Bureau of Indian Affairs specifically is being requested to participate as a cooperator. Current scheduling calls for completion of a draft supplemental EIS for public review in early 1988, with a final supplemental EIS due by mid-1988.

The Northern Cheyenne and the Crow Indian Reservations in southeastern Montana will be examined for possible effects from Round I Powder River Federal coal leasing. The following social, economic and cultural issues and concerns have been identified to date:

- Increased vehicular traffic through the Northern Cheyenne Reservation.
- High unemployment rate on the Northern Cheyenne Reservation.
- Dilution of traditional Northern Cheyenne culture.
- Inflation of prices of consumer goods and housing.
- Population increases both on and off reservation and associated increased demands for some social services, including health care, police protection, schools, and housing.
- Lack of opportunity for Indians to fully participate in the benefits of regional economic development.

The public is encouraged to present their ideas and views on these and other social, economic or cultural issues and concerns. All identified issues and concerns will be considered in scoping and preparing the supplemental EIS. The scoping process will be used to collect additional issues and concerns relevant to the EIS and will involve a public meeting, other meetings on the two reservations with interested parties and a mail-out scoping packet, which

individuals may request, fill out and return to the BLM at the following address:

BLM, Miles City District Office, P.O. Box 940, Miles City, Montana 59301

A public scoping meeting will be held on April 23 at 1 p.m. in the sixth floor conference room at the Granite Tower Building, 222 North 32nd Street, Billings, Montana. Comments on scope of the EIS are particularly sought from the public, interest groups, other agency personnel and members of the coal industry at this meeting. Other public meetings are planned for Lame Deer and Crow Agency, Montana. Dates, times and locations will be announced in the regional media, when firm. The scoping packets will be distributed in late March to parties known or believed to be interested. Responses and comments will be accepted through April 30, 1987.

ADDRESSES: Information and scoping packets for the supplemental EIS can be obtained by writing, calling or visiting either of the following BLM offices in the area:

BLM, Montana State office (930),
Attention: Loren Cabe, P.O. Box 36800,
Billings, Montana 59107. Phone: (406) 657-6815

BLM, Miles City District Office,
Attention: Rob McWhorter, P.O. Box 940,
Miles City, Montana 59301.
Phone: (406) 232-4331

FOR FURTHER INFORMATION CONTACT:

Rob McWhorter at the above address in Miles City.

If at any time during the EIS process, any person wishes to raise issues for consideration in the EIS, he/she should feel free to do so by contacting either of the BLM offices above. To be most useful for scoping, such comments must be received by April 30, 1987.

Dated: February 18, 1987.

Mat Millenbach,
District Manager.

[FR Doc. 87-4101 Filed 3-2-87; 8:45 am]

BILLING CODE 4310-DN-M

[NM-016-4212-14, NM 65259]

Albuquerque District, NM; Realty Action on Proposed Land Sale in Rio Arriba County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on proposed land sale.

SUMMARY: The following described land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy

and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value:

T. 28 N., R. 5 W.

Sec. 25: SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$

The land described aggregates 5 acres in Rio Arriba County.

The above described land is proposed to be offered to Mr. Richard Arnold in a direct sale at fair market value. Mr. Arnold's family has owned and occupied the residence/ranch headquarters since 1926. The structures were originally built by Russell Ernest Arnold, Richard Arnold's father. The unintentional trespass resulted from the fact that the facilities were constructed on public land adjacent to 120 acres patented to Russell Arnold pursuant to the Homestead Act of May 20, 1862. Disposal by direct sale will legalize the occupancy of the land, protect the owner's investment and rid the Bureau of an unmanageable tract of land. The Bureau's San Juan Management Framework Plan (Decision L-4.2) identified the public land values and natural resources involved. This document was approved on August 17, 1979. No public comments pertaining to this MFP Decision were received.

The subject public land tract is not required for any other Federal purpose and meets the disposal criteria of the regulations contained in 43 CFR 2710.0-3(a)(3).

This Notice or Realty Action shall be published once in the *Federal Register* and once a week for the three consecutive weeks in a newspaper of general circulation.

The BLM has not effectively managed this land in the past and will not be capable of such management in the future. The tract has been occupied for over 60 years. Impacts associated with the occupancy have already occurred, making it difficult and uneconomical to manage as public land.

The land will not be offered for sale for at least 60 days after the date of this notice.

The terms and conditions applicable to the sale are:

1. The patent will include a reservation of a right-of-way for ditches and canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.
2. The sale of these lands will be subject to all existing rights.
3. All minerals will be reserved to the United States.
4. Geothermal resources will be reserved to the United States.

Detailed information concerning the sale, including the combined Environmental Assessment and Land Report, is available for review at the Farmington Resource Area Office, 900 La Plata Highway, Farmington, New Mexico and the Albuquerque District Office, 435 Montana Road, NE., Albuquerque, New Mexico.

For a period of 45 days from the date of this notice interested parties may submit comments to the District Manager at 435 Montana Road, NE., Albuquerque, New Mexico 87107. Any adverse comments will be evaluated by the BLM State Director who may vacate or modify this proposed action and issue a final determination. In the absence of any objections this proposed

action will become the final determination of the Department of the Interior.

L. Paul Applegate,
District Manager.

February 20, 1987.

[FR Doc. 87-4332 Filed 3-2-87; 8:45 am]

BILLING CODE 4310-FB-M

[WY-920-07-4111-15-7001; W-85171]

Proposed Reinstatement of Terminated Oil and Gas Lease, Hot Springs, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-85171 for lands in Hot Springs County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$7 per acre, or fraction thereof, per year and not less than 16 $\frac{2}{3}$ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$106.25 to reimburse the Department for the cost of this *Federal Register* notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-85171 effective October 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,
Chief, Leasing Section.

[FR Doc. 87-4341 Filed 3-2-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-07-4111-15-7001; W-69029]

Proposed Reinstatement of Terminated Oil and Gas Lease, Natrona County, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-69029 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$5 per acre, or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$106.25 to reimburse the Department for the cost of this *Federal Register* notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-69029 effective October 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,
Chief, Leasing Section.

[FR Doc. 87-4343 Filed 3-2-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-07-4111-15-7001; W-67150]

Proposed Reinstatement of Terminated Oil and Gas Lease, Hot Springs WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-67150 for lands in Hot Springs County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$6 per acre, or fraction thereof, per year and not less than 16 $\frac{2}{3}$ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$106.25 to reimburse the Department for the cost of this *Federal Register* notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-67150 effective October 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,
Chief, Leasing Section.

[FR Doc. 87-4342 Filed 3-2-87; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in

the National Register were received by the National Park Service before February 21, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by March 18, 1987.

Carol D. Shull,
Chief of Registration, National Register.

ALABAMA

De Kalb County

Valley Head, *Winston Place*, Off AL 117

CALIFORNIA

El Dorado County

Placerville, *Eddy Tree Breeding Station*, 2480 and 2500 Carson Rd.

South Lake Tahoe, *Baldwin Estate*, NW of US 50 and CA 89 jct. on N side of CA 89.

South Lake Tahoe, *Heller Estate*, NW of US 50 and CA 89 jct. on N side of CA 89.

South Lake Tahoe, *Pope Estate*, NW of US 50 and CA 89 jct. on N side of CA 89.

FLORIDA

Lake County

Mount Dora, *Lakeside Inn*, 100 N. Alexander St.

IOWA

Henry County

Mt. Pleasant vicinity, *Pleasant Lawn School Historic District*, Off IA 218

KENTUCKY

Anderson County

Lawrenceburg vicinity, *Old Prentice Distillery*, KY 513

Lewis County

Kirkville, *Ohio River Lock and Dam No. 31—Grounds and Buildings*, Rt. No. 1, Box 18

Warren County

Smiths Grove, *Smiths Grove Historic District (Boundary Increase)*, NW corner of Second and Main Sts.

MICHIGAN

Huron County

Port Austin, *Winsor and Snover Bank Building*, 8648 Lake St.

MISSISSIPPI

Clay County

Town of Palo Alto

NEW YORK

Dutchess County

Washington, *Lynfield*, South Rd.

NORTH CAROLINA

Watauga County

Boone, *Jones House*, 124 E. King St.

RHODE ISLAND

Washington County

South Kingstown, *Peace Dale Historic District*, Roughly bounded by Kensey Rd., Oakwoods Dr., Kingstown Rd., School, Church and Railroad Sts.

TENNESSEE

Sumner County

Gallatin, *Williamson and Adams Carriage Factory*, 136 E. Main St.

TEXAS

El Paso County

Fort Bliss, *Quarters Number 1*, 228 Sheridan Rd.

VIRGINIA

Norfolk (Independent City)

Downtown Norfolk Historic District, Granby, Main, and Plume Sts., City Hall Ave., and Bank St.

WEST VIRGINIA

Harrison County

Bridgeport, *Johnson, Gov. Joseph, House*, 424 Oakdale Ave.

Jefferson County

Charles Town vicinity, *Beverly*, US 340

Mineral County

Burlington vicinity *Carskadon House*, Rt. 1, Box 93A, Beaver Run Rd.

WISCONSIN

Milwaukee County

Milwaukee, *First Ward Triangle Historic District*, Roughly Franklin Pl., N. Prospect and E. Juneau Aves., and E. Knapp St.

Milwaukee, *Old World Third Street Historic District*, N. Old World Third St., W. Highland Ave., and W. State St.

Racine County

Racine, *Old Main Street Historic District*, Roughly bounded by Second St., Lake Ave., Fifth St., and Wisconsin Ave.

Walworth County

Delavan, *Phoenix Hall-Wisconsin Institute for the Education of the Deaf and Dumb*, 309 W. Walworth St.

[FR Doc. 87-4381 Filed 3-2-87; 8:45 am]

BILLING CODE 4310-70-M

United States World Heritage Nomination Process; Calendar Year 1987

AGENCY: National Park Service, U.S. Department of the Interior.

ACTION: Public notice and request for comment.

SUMMARY: The Department of the Interior, through the National Park

Service, announces the process that will be used in calendar 1987 to identify possible United States nominations to the World Heritage List. This notice lists the properties that are included in the Inventory of Potential Future United States World Heritage Nominations, and solicits public comments and suggestions on properties that should be considered as potential United States World Heritage nominations this year. This notice identifies the requirements that United States properties must satisfy to be considered for nomination, and references the rules that the Department of the Interior has adopted to implement the World Heritage Convention. In addition, this notice contains the criteria which cultural or natural properties must satisfy for World Heritage status, and lists the 14 United States properties inscribed on the World Heritage List as of January 1, 1986.

DATES: Comments or suggestions of cultural or natural properties as potential 1988 United States World Heritage nominations must be received within 60 days of this notice. Comments should pertain to the merits of properties included on the inventory or others which the respondent believes should be considered for nomination to the World Heritage List in 1987. Comments should also specify how the recommended property satisfies one or more of the World Heritage criteria. The Department will decide the issue of nominations for this year and will publish the decision in the *Federal Register*, with a request for further public comment in the event that potential nominations are identified. Comments on potential United States nominations which may be listed must be received within 30 days of the second notice. In the event that nominations are favorably identified and received, the Department of Interior will subsequently publish in the *Federal Register* a final list of proposed 1988 United States World Heritage nominations. A detailed nomination document will be prepared for each such proposed nomination. In November, the Federal Interagency Panel for World Heritage will review the accuracy and completeness of draft 1988 United States nominations, and will make recommendations to the Department of the Interior. The Assistant Secretary for Fish and Wildlife and Parks will subsequently transmit approved nomination(s) on behalf of the United States to the World Heritage Committee Secretariat, through the Department of State, by December 15, 1987, for evaluation by the World Heritage Committee in a process that

could lead to inscription on the World Heritage List by fall 1988.

ADDRESS: Written comments or recommendations should be sent to the Director, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127. Attention: World Heritage Convention-773.

FOR FURTHER INFORMATION CONTACT: Mr. James Stewart, Acting Associate Director, Planning and Development, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127 (202/343-6741).

SUPPLEMENTARY INFORMATION: The Convention Concerning the Protection of the World Cultural and Natural Heritage, ratified by the United States and 91 other countries, has established a system of international cooperation through which cultural and natural properties of outstanding universal value to mankind may be recognized and protected. The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement throughout the world. The Convention complements each participating nation's heritage conservation programs, and provides for:

- (a) The establishment of an elected 21-member World Heritage Committee to further the goals of the Convention and to approve properties for inclusion on the World Heritage List;
- (b) The development and maintenance of a World Heritage List to be comprised of natural and cultural properties of outstanding universal value;
- (c) The preparation of a List of World Heritage in Danger;
- (d) The establishment of a World Heritage Fund to assist participating countries in identifying, preserving, and protecting World Heritage properties;
- (e) The provision of technical assistance to participating countries, upon request; and
- (f) The promotion and enhancement of public knowledge and understanding of the importance of heritage conservation at the international level.

Participating nations identify and nominate their sites for inclusion on the World Heritage List. The World Heritage Committee reviews and evaluates all nominations against established criteria. Under the Convention, each participating nation assumes responsibility for taking appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, and

rehabilitation of World Heritage properties situated within its borders.

In the United States, the Department of the Interior is responsible for directing and coordinating United States participation in the World Heritage Convention. The Department implements its responsibilities under the Convention in accordance with the statutory mandate contained in Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96-515; 16 U.S.C. 470a-1, a-2). On May 27, 1982, the Interior Department published in the Federal Register the policies and procedures which are used to carry out this legislative mandate (47 FR 23392). The rules contain additional information on the Convention and its implementation in the United States, and identify the specific requirements that United States properties must satisfy before they can be nominated for World Heritage status, i.e., the property must have previously been determined to be of national significance, its owner must concur in writing to its nomination, and its nomination must include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment.

The Federal Interagency Panel for World Heritage assists the Department in implementing the Convention by making recommendations on United States World Heritage policy, procedures, and nominations. The Panel is chaired by the Assistant Secretary for Fish and Wildlife and Parks, and includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, Fish and Wildlife Service, and the Bureau of Land Management within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; National Oceanic and Atmospheric Administration, Department of Commerce; Forest Service, Department of Agriculture; the U.S. Information Agency; and the Department of State.

I. Potential United States World Heritage Nominations

The Department encourages any agency, organization, or individual to submit written comments on how one or more properties on the United States World Heritage Indicative Inventory which follows, or other qualified property, relates to and satisfies one or more of the World Heritage criteria (Section II of this notice). In order for a United States property to be considered for nomination to the World Heritage

List, it must satisfy the requirements set forth earlier, i.e., (a) it must have previously been determined to be of national significance, (b) its owner must concur in writing to such nomination, and (c) its nomination document must include evidence of such legal protections as may be necessary to preserve the property and its environment. Information provided by interested parties will be used in evaluating the World Heritage potential of a particular cultural or natural property.

The following properties were published in the Federal Register on May 6, 1982, as the Inventory of Potential Future United States World Heritage Nominations (47 FR 19648) and amended in (48 FR 38100). The Inventory discusses briefly the significance of each site, and identifies the specific World Heritage criteria that the sites appear to satisfy. The properties included on the Inventory, minus properties nominated in intervening years, are as follows:

Natural

Acadia National Park, Maine
Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge, Alaska
Arches National Park, Utah
Arctic National Wildlife Refuge, Alaska
Big Bend National Park, Texas
Bryce Canyon National Park, Utah
Canyonlands National Park, Utah
Capitol Reef National Park, Utah
Carlsbad Caverns National Park, New Mexico
Colorado National Monument, Colorado
Crater Lake National Park, Oregon
Death Valley National Monument, California
Denali National Park, Alaska
Gates of the Arctic National Park, Alaska
Glacier Bay National Park, Alaska
Grand Teton National Park, Wyoming
Guadalupe Mountains National Park, Texas
Haleakala National Park, Hawaii
Joshua Tree National Monument, California
Katmai National Park, Alaska
Mount Rainier National Park, Washington
North Cascades National Park, Washington
Okefenokee National Wildlife Refuge, Georgia-Florida
Organ Pipe Cactus National Monument/Cabeza Prieta National Wildlife Range, Arizona
Point Reyes National Seashore, California
Rainbow Bridge National Monument, Utah
Rocky Mountain National Park, Colorado
Saguaro National Monument, Arizona
Sequoia/Kings Canyon National Parks, California
Virginia Coast Reserve, Virginia
Zion National Park, Utah

Cultural

Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge (Fur Seal Rookeries), Alaska
Auditorium Building, Illinois-Chicago

Belle Telephone Laboratories, New York-New York City
 Brooklyn Bridge, Brooklyn, New York
 Cape Krusenstern Archaeological District, Kotzebue, Alaska
 Carson, Pirie, Scott and Company Store, Chicago, Illinois
 Casa Grande National Monument, Coolidge, Arizona
 Chapel Hall, Gallaudet College, District of Columbia
 Eads Bridge, Illinois-Missouri
 Fallingwater, Mill Run, Pennsylvania
 Frank Lloyd Wright Home and Studio, Oak Park, Illinois
 General Electric Research Laboratory, Schenectady, New York
 Goddard Rocket Launching Site, Auburn, Massachusetts
 Hohokam Pima National Monument, Arizona
 Leiter II Building, Chicago, Illinois
 Lindenmeier Site, Colorado
 Lowell Observatory, Flagstaff, Arizona
 Marquette Building, Chicago, Illinois
 McCormick Farm and Workshop, Walnut Grove, Virginia
 Mound City Group National Monument, Ohio
 Moundville Site, Alabama
 New Harmony Historic District, New Harmony, Indiana
 Ocmulgee National Monument, New Mexico
 Poverty Point, Bayou Macon, Louisiana
 Prudential (Guaranty) Building, Buffalo, New York
 Pupin Physics Laboratories, Columbia University, New York
 Reliance Building, Chicago, Illinois
 Robie House, Chicago, Illinois
 Rookery Building, Chicago, Illinois
 San Xavier Del Bac, Tucson, Arizona
 Savannah Historic District
 South Dearborn Street-Printing House Row
 North Historic District, Chicago, Illinois
 Taliesin, Spring Green, Wisconsin
 Taos Pueblo, Taos, New Mexico
 Trinity Site, Bingham, New Mexico
 Unity Temple, Oak Park, Illinois
 Ventana Cave, Arizona
 Wainwright Building, St. Louis, Missouri
 Warm Springs Historic District, Georgia
 Washington Monument, District of Columbia

Additional information on each of the properties listed above may be found in the May 6, 1982, *Federal Register* notice (47 FR 19648), which includes a description of the properties on the United States World Heritage inventory. This notice is available from the National Park Service (see addresses). Written comments are welcome on these and other qualified properties.

II. World Heritage Criteria

The following criteria are used by the World Heritage Committee in evaluating the World Heritage potential of cultural and natural properties nominated to it:

A. Criteria for the Inclusion of Cultural Properties on the World Heritage List

(1) A monument, group of buildings or site which is nominated for inclusion on the World Heritage List will be considered to be of outstanding

universal value for the purposes of the Convention when the Committee finds that it meets one or more of the following criteria *and* the test of authenticity. Each property nominated should therefore:

- (i) Represent a unique artistic achievement, a masterpiece of the creative genius; or
- (ii) Have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts or town planning and landscaping; or
- (iii) Bear a unique or at least exceptional testimony to a civilization which has disappeared; or
- (iv) Be an outstanding example of a type of structure which illustrates a significant stage in history; or
- (v) Be an outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change; or
- (vi) Be directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance. (The Committee considers that this criterion should justify inclusion in the List only in exceptional circumstances or in conjunction with other criteria); and

In addition, the property must meet the test of authenticity in design, materials, workmanship, or setting.

(2) The following additional factors will be kept in mind by the Committee in deciding on the eligibility of a cultural property for inclusion on the List;

- (i) The state of preservation of the property should be evaluated relatively, that is, it should be compared with that of other property of the same type dating from the same period, both inside and outside the country's borders; and
- (ii) Nominations of immovable property which is likely to become movable will not be considered.

(B) Criteria for the Inclusion of Natural Properties on the World Heritage List

(1) A natural heritage property which is submitted for inclusion in the World Heritage List will be considered to be of outstanding universal value for the purposes of the Convention when the Committee finds that it meets one or more of the following criteria and fulfills the conditions of integrity set out below. Properties nominated should therefore:

- (i) Be outstanding examples representing the major stages of the earth's evolutionary history; or
- (ii) Be outstanding examples representing significant ongoing geological processes, biological evolution, and man's interaction with his natural environment; as distinct from the periods of the earth's

development, this focuses upon ongoing processes in the development of communities of plants and animals, landforms, and marine areas and fresh water bodies; or

(iii) *Contain superlative natural phenomena, formations or features*, for instance, outstanding examples of the most important ecosystems, areas of exceptional natural beauty or exceptional combinations of natural and cultural elements; or

(iv) *Contain the foremost natural habitats where threatened species of animals or plants of outstanding universal value* from the point of view of science or conservation still survive.

(2) In addition to the above criteria, the sites should also fulfill the conditions of integrity:

(i) The sites described in (i) above should contain all or most of the key interrelated and interdependent elements in their natural relationships; for example, an "ice age" area would be expected to include the snow field, the glacier itself, and samples of cutting patterns, deposition, and colonization (striations, moraines, pioneer stages of plant succession, etc.).

(ii) The sites described in (ii) above should have sufficient size and contain the necessary elements to demonstrate the key aspects of the process and to be self-perpetuating. For example, an area of "tropical rain forest" may be expected to include some variation in elevation above sea level, changes in topography and soil types, river banks or oxbow lakes, to demonstrate the diversity and complexity of the system.

(iii) The sites described in (iii) above should contain those ecosystem components required for the continuity of the species or of the other natural elements or processes/objects to be conserved. This will vary according to individual cases; for example, the protected area of a waterfall would include all, or as much as possible, of the supporting upstream watershed; or a coral reef area would include the zone necessary to control siltation or pollution through the stream flow or ocean currents which provide its nutrients.

(iv) The sites containing threatened species as described in (iv) above should be of sufficient size and contain necessary habitat requirements for the survival of the species.

(v) In the case of migratory species, seasonal sites necessary for their survival, wherever they are located, should be adequately protected. The Committee must receive assurances that the necessary measures be taken to ensure that the species are adequately

protected throughout their full life cycle. Agreements made in this connection, either through adherence to international conventions or in the form of other multilateral or bilateral arrangements, would provide this assurance.

(3) The property should be evaluated relatively, that is, it should be compared with other properties of the same type, both inside and outside the country's borders, within a biogeographic province, or migratory pattern.

III. World Heritage List

As of January 1, 1987, the World Heritage Committee had approved the following 14 cultural and natural properties in the United States for inscription on the World Heritage List. (The World Heritage List currently includes 247 properties worldwide.)

Cahokia Mounds State Historic Site
Everglades National Park
Grand Canyon National Park
Great Smoky Mountains National Park
Independence Hall
Mammoth Cave National Park
Mesa Verde National Park
Olympic National Park
Redwood National Park
San Juan National Historic Site and La Fortaleza
The Statue of Liberty
Wrangell-St. Elias National Park
Yellowstone National Park
Yosemite National Park

Dated: February 11, 1987.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-4382 Filed 3-2-87; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunities; Jordan

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan to the Government of Jordan (Borrower) as part of A.I.D.'s overall development assistance program. The proceeds of this loan will be used to finance shelter projects for low income families residing in Jordan. The following is the address of the Borrower and the loan amount for projects that will soon be ready to receive financing and for which the Borrower will be requesting proposals from U.S. lenders or investment bankers: Jordan, Project: 278-HG-001—\$15,000,000, Attention: Dr. Mansour H. Haddadin, Director of Finance

Department, Ministry of Finance, P.O. Box 85, Amman, Jordan, Telephone: 636-321, 624-121 Telex: 23634 (call Back FINANC JO).

Interested investors should telegram their bids to the Borrower's representative on March 10, 1987, but no later than 8:00 a.m. Amman Time (1:00 a.m. New York time). Bids should be open at least 48 hours. Copies of all bids should be simultaneously sent to the following addresses:

Ms. Sonia Hammam, Acting Assistant Director/Near East, RHUDO/Tunis, USAID/Tunis, c/o American Embassy, Tunis, Tunisia, Telex: 14182, Telephone: 216-1-784-375, 216-1-781-305, 216-1-782-764

Agency for International Development, Michael G. Kitay, Herbert T. Mcdevitt, GC/PRE, Room 3208 N.S., Washington, D.C. 20523, Telex No.: 982703 AID WSA, Telefax No. 202/647-1805.

(Note: Telefax is preferred communication)

The bids should consider the following terms:

- (a) Amount: U.S. \$15 million.
- (b) Term: Up to 30 years.
- (c) Grace Period on Principal: 10 years.
- (d) Interest Rate: Fixed.
- (e) Repayment of Principal and Interest: Semi-annually.
- (f) Fees: Investor fees should be specified in bids.

(g) Prepayment: At borrowers option. Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty, covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lender eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. Corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof. The maximum rate of interest shall be a rate which in A.I.D.'s opinion is similar to current borrowing rates for Housing and Urban Development housing mortgage loans.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 6212 NS., Washington, DC 20523, Telephone: 202/647-9082.

Dated: February 25, 1987.

Mario Pita,

Deputy Director, Office of Housing and Urban Programs.

[FR Doc. 87-4330 Filed 3-2-87; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[I.C.C. Order No. P-91]

Passenger Train Operation; Atchinson, Topeka, and Santa Fe Railway Co.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between New Orleans, Louisiana and Los Angeles, California, via El Paso, Texas. The operation of these trains requires the use of the tracks and other facilities of Southern Pacific Transportation Company (SP). A portion of the SP tracks near El Paso, Texas, are temporarily out of service because of a derailment. An alternate route is available via The Atchinson, Topeka and Santa Fe Railway Company between El Paso, Texas and Deming, New Mexico, via Rincon, New Mexico.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), The Atchinson, Topeka and Santa Fe Railway Company (ATSF) is directed to operate trains of the National Railroad

Passenger Corporation (Amtrak) between El Paso, Texas, via Rincon, New Mexico, and a connection with Southern Pacific Transportation Company at Deming, New Mexico.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provision of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 9:40 a.m., (EST), February 15, 1987.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m. (EST), February 16, 1987, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon The Atchinson, Topeka and Santa Fe Railway Company and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, February 15, 1987.

Interstate Commerce Commission.

Noreta R. McGee,

Secretary.

[FR Doc. 87-4368 Filed 3-2-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-17,813]

Lasalle Steel Co., Spring City, PA; Negative Determination on Reconsideration

On November 26, 1986, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers at the LaSalle Steel

Company, Spring City, Pennsylvania. This determination was published in the Federal Register on December 5, 1986 (51 FR 43988).

The International Association of Bridge, Structural and Ornamental Iron Workers Union's application for reconsideration claims that the Department applied the wrong import tables in testing for the increased import criterion of the Group Eligibility Requirements of the Trade Act. It alleges that the Department's use of import data on cold finished steel bars and hot and cold rolled alloy steel bars was not applicable since the workers produced hot and cold drawn steel and specialty bars.

On reconsideration, the Department found that LaSalle Steel purchased hot rolled carbon steel bars and hot rolled alloy steel bars and finished them into cold drawn bars through a cold drawn operation. Findings on reconsideration show that the decreased sales and production criterion of the Group Eligibility Requirements of the Trade Act was not met in 1985. Sales and production of cold drawn carbon steel and cold drawn alloy bars did not decrease in 1985 compared to 1984. The plant closed on July 31, 1986.

U.S. imports of cold finished carbon steel bars declined absolutely and relative to domestic shipments in the first half of 1986 compared to the same period in 1985. Import data for cold drawn bars are included in the Department's import tables for cold finished steel bars. Official government import data do not break out cold finished steel bars by how they are made—turned, rolled or drawn. U.S. imports of cold formed alloy steel bars declined absolutely and relative to domestic shipments in the first half of 1986 compared to the same period in 1985.

The union also claims that foreign firms have taken business away from the LaSalle Steel Company. The union cites a study by the American Iron and Steel Institute on indirect steel imports—steel incorporated into other products being imported into the U.S. Steel drawn bars produced at LaSalle steel are not like or directly competitive with a finished article incorporating steel. The courts have concluded that imported finished articles are not like or directly competitive with domestic component parts thereof, *United Shoe Workers of America, AFL-CIO v. Bedell*, 506 F.2d 174 (D.C. Cir., 1974). Since increased imports of articles like or directly competitive with those produced by LaSalle Steel could not be substantiated during the time period applicable to the worker petition, the

workers eligibility requirements in the Trade Act were not satisfied.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to former workers at the LaSalle Steel Company, Spring City, Pennsylvania.

Signed at Washington, DC, this 20th day of February, 1987.

Barbara Ann Farmer,

Acting Director, Office of Program Management, UIS.

[FR Doc. 87-4403 Filed 3-2-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,931]

Suburban Power Piping Corp., Cleveland, OH; Negative Determination Regarding Application for Reconsideration

On January 12, 1987, after being granted a filing extension, the Pipe Fitters Local Union #120 requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers at Suburban Power Piping Corporation, Cleveland, Ohio. The denial notice was published in the Federal Register on December 12, 1986 (51 FR 44845).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claim is based primarily on the loss of jobs and business because of imported prepiped components in the installation of the electro galvanizing line project at LTV Steel Company in 1985 and in the installation of the continuous caster project at Republic Steel in 1983.

Findings in the investigative file show that the prepiped components on both projects were owner-furnished equipment. The continuous caster and the electro galvanizing line were purchased off-shore by Republic Steel

and LTV Steel, respectively, prior to installation by the subject firm. Although Suburban Power Piping could have performed the fabricated piping on the components for the continuous caster and the electro galvanizing line in its own fab shop, it did not have the opportunity to do so. The components on the owner-furnished equipment were not included in the specs for the installation on either project. A potential loss of sales and production because of the pre-fabricated piped components would not form a basis for certification.

In any event, the findings show that the worker separation on the pre-fabricated piping for the installation of the continuous caster project were outside the scope of the Department's investigation. Work on the continuous caster project was awarded to Suburban Power Piping in 1982 and completed by 1983. The one-year rule set out in section 223(b)(1) of the Trade Act does not permit the certification of workers separated more than one year prior to the date of the petition. The petition date is August 14, 1986.

With respect to the pre-fabricated piping for the the elector galvanizing line, the findings show that this project was awarded to Suburban Power Piping on June 19, 1984. All work on the project was completed by April 1985. Worker separations in 1984 resulting from the loss of pre-fabricated piping work would be outside the scope of the investigation because of the one-year rule. None of the Group Eligibility Requirements of the Trade Act were met in 1985. The Department of Labor's survey of firms which solicited bids from Suburban Power Piping for work scheduled in 1985 and 1986 revealed that the projects were either not awarded or were awarded to other domestic firms.

Concerning the Department's determination in TA-W-16,576 for workers producing nonclay refractory products at C.E. Basic, Maple Grove, Ohio, the Department does not see that decision as serving as a precedent for the certification of workers at Suburban Power and Piping. In the C.E. Basic case, the workers produce a finished article which was adversely affected by increased imports. In the case at hand, Suburban Power Piping is a mechanical contractor which installs and could have fabricated the piping components but did not have the opportunity to do so. In 1985, none of the group eligibility requirements for workers at Suburban Power Piping were met. In 1986, the increased import criterion was not met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of February 1987

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-4404 Filed 3-2-87; 8:45 am]

BILLING CODE 4510-30-M

Nurley Drilling Co. et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this

notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determinations of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 13, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 13, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC this 17th day of February 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Nurley Drilling Co. (Workers)	Amarillo, TX	2/9/87	1/21/87	TA-W 19, 121	Oil and gas drilling.
Pacer Industries, Inc. (IAMAW)	Washington, MO	2/9/87	1/28/87	TA-W 19, 122	Auto parts.
USX Corporation (USOA)	Bradstock, PA	2/17/87	2/3/87	TA-W 19, 123	Steel slabs.
Krasco, Inc. (USOA)	Triadelphia, WV	2/17/87	2/3/87	TA-W 19, 124	Thread protectors.
Ladish Company Kentucky Division (USOA)	Cynthiana, KY	2/17/87	2/2/87	TA-W 19, 125	Industrial fitting.
High Tech Collieries, Inc. (UMWOA)	Fairmont, WV	2/17/87	1/30/87	TA-W 19, 126	Metallurgical coal.
Livingston Mfg., Inc. (ACTWU)	Livingston, AL	2/17/87	2/2/87	TA-W 19, 127	Ladies' sportswear.
Cape Ann Tool Co. Grantors Trust (Workers)	Pigeon Cove, MA	2/17/87	1/29/87	TA-W 19, 128	Closed-die drop forgings.
Queen City Well Services (Workers)	Dickinson, ND	2/17/87	1/22/87	TA-W 19, 129	Clean up well services.
Ada Oil Company (Company)	Flora, IL	2/17/87	2/2/87	TA-W 19, 130	Crude oil.
Worthington Compressor Operation of Dresser-Rand (PMLNA)	Buffalo, NY	2/9/87	1/27/87	TA-W 19, 131	Compressors.
L. E. Carpenter-Sanitas Division (Workers)	Hazleton, PA	2/9/87	1/28/87	TA-W 19, 123	Wall coverings.
Quanex Corporation Atlantic Tube Div. (Teamsters)	So. Plainfield NJ	2/9/87	1/28/87	TA-W 19, 133	Steel tubing.
Phillips Petroleum Co. Gas & Gas Liquids Div. (Workers)	Borger, TX	2/9/87	1/30/87	TA-W 19, 134	Gas well analysis.
Phillips Petroleum Co. Corporate Engineering (Workers)	Borger, TX	2/9/87	1/30/87	TA-W 19, 135	Engineering services.
CSX Corporation (formerly Texas Gas Exploration) (Workers)	Oklahoma City, OK	2/9/87	1/30/87	TA-W 19, 136	Oil/gas reserve monitoring.
Westinghouse Corp. (IBEW)	Cincinnati, OH	2/9/87	1/30/87	TA-W 19, 137	Electrical distribution equip.
Quiroz Construction (Workers)	Midland, TX	2/9/87	1/29/87	TA-W 19, 138	Home construction.
McDaniel Mining Co. (UMWOA)	Mt. Hope, WV	2/9/87	1/30/87	TA-W 19, 139	Coal.
Wyoming Casing Service (Workers)	Dickinson, ND	2/17/87	2/4/87	TA-W 19, 140	Casing for oil drilling.
Velco Gray, Inc. (Workers)	Odessa, TX	2/17/87	2/4/87	TA-W 19, 141	Sales, service, repair wellhead/oil production equipment.

APPENDIX—Continued

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Tampo Mfg. Co., Inc. (IUE)	San Antonio, TX	2/17/87	2/3/87	TA-W 19, 142	Pneumatic and vibratory rollers.
SIFCO Industries, Inc. Forge Group Division (IDSC)	Cleveland, OH	2/17/87	2/2/87	TA-W 19, 143	Forgings.
Plume & Atwood Brass Mill (USWA)	Thomaston, CT	2/17/87	2/4/87	TA-W 19, 144	Brass, bronze, etc. strip.
Pennzoil Exploration & Production Co. (Workers)	Denver, CO	2/17/87	2/3/87	TA-W 19, 145	Oil and gas production.
Impala Drilling Co. (Worker)	College Station, TX	2/17/87	2/2/87	TA-W 19, 146	Oil drilling.
General Motors (UAW)	Danville, IL	2/17/87	2/7/87	TA-W 19, 147	Gray iron castings.
Deutz Allis Corporation (IAMAW)	Topeka, KS	2/17/87	2/3/87	TA-W 19, 148	Agricultural equipment.
Key Mud Engineering, Inc. (Workers)	Denver, CO	2/17/87	2/2/87	TA-W 19, 149	Oil drilling service.
Cooper Biomedical (Company)	Freehold, NJ	2/17/87	1/29/87	TA-W 19, 150	Diagnostic reagents.
Permian Bank (Workers)	Odessa, TX	2/17/87	1/30/87	TA-W 19, 151	Loan money (service).
Geoman (Workers)	Midland, TX	2/17/87	2/3/87	TA-W 19, 152	Geological maps.
Spun Steel, Inc. (Workers)	Canton, OH	2/17/87	2/3/87	TA-W 19, 153	Automobile part production.
Joelle Fashions (Workers)	Hazlet, PA	2/17/87	2/5/87	TA-W 19, 154	Ladies' sportswear.
Central Ohio Retail Grocers Assoc. (Workers)	Columbus, OH	2/17/87	1/28/87	TA-W 19, 155	Coupon processing.
Express Services, Inc. (Workers)	Midland, TX	2/17/87	2/3/87	TA-W 19, 156	Printing services.
Amira Company (UFWO)	Bolivar, TN	2/17/87	2/5/87	TA-W 19, 157	Tanned leather.
Dunkirk Radiator (USWA)	Dunkirk, NY	2/17/87	2/4/87	TA-W 19, 158	Heating boilers.
Lodge & Shipley (USWA)	Cincinnati, OH	2/17/87	2/4/87	TA-W 19, 159	Numerical controlled lathes.
Kingdom Sheet Metal (Workers)	Salt Lake, UT	2/17/87	2/4/87	TA-W 19, 160	Fabricated structural steel.
National Roll Company (Workers)	Delmont, PA	2/17/87	2/1/87	TA-W 19, 161	Iron and steel rolling equipment.
Oil Dynamics, Inc. (Workers)	Tulsa, OK	2/17/87	2/6/87	TA-W 19, 162	Electric submersible pumping systems.
Southern Coal & Trucking (UMW)	Bolt, WV	2/17/87	2/5/87	TA-W 19, 163	Steam and metallurgical coal.
V.S.D. Clothing (ILGWU)	Newburgh, NY	2/17/87	2/6/87	TA-W 19, 164	Ladies' raincoats and wool coats.
Westinghouse Transport & Leasing (TLU)	No. Huntington, PA	2/17/87	2/5/87	TA-W 19, 165	Transport company for Westinghouse.

[FR Doc. 87-4405 Filed 3-2-87; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-87-15-C]

Amber Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Amber Coal Company, Inc., HC 79 Box 1297, Martin, Kentucky 41649 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 7 (I.D. No. 15-11155) located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The height of the coal bed has dropped from 60 to 48 inches and is expected to drop to 45 inches.

3. Petitioner states that the use of canopies on the mine's electric face equipment would result in a diminution of safety to the miners affected because the canopies would limit the equipment operators visibility and strike and dislodge roof bolts, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and

Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 2, 1987. Copies of the petition are available for inspection at that address.

Dated: February 19, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-4406 Filed 3-2-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-255-C]

Arch of Kentucky, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Arch of Kentucky, Inc., P.O. Box 787, Lynch, Kentucky 40855 has filed a petition to modify the application of 30 CFR 77.803 (fail safe ground check circuits on high-voltage resistance grounds systems) to its Mine A (I.D. No. 15-15711) located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all high-voltage, resistance grounded systems include a fail safe ground check circuit or other no less effective device approved by the Secretary to monitor continuously the grounding circuit to assure continuity. The fail safe ground check circuit shall cause the circuit breaker to open when either the ground or ground check wire is broken.

2. As an alternate method, petitioner proposes that each transformer will be connected to the ground conductor by two separate grounds, the failure of either will have no effect on the continuity of the circuit. Each skid-mounted power center or circuit breaker will be connected to two visible grounds and one cabled ground, the failure of any two of which will have no effect on the continuity of the circuit.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 2, 1987. Copies of the petition are available for inspection at that address.

Dated: February 24, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-4407 Filed 3-2-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-256-C]

C & B Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

C & B Coal Company, Inc., Rt. 1, Box 507, Norton, Virginia 24273 has filed a petition to modify the application or 30

CFR 77.803 (fail safe ground check circuits on high-voltage resistance grounded systems) to its Colliers Creek No. 1 Mine (I.D. No. 15-15225), and its Run Coal No. 2 Mine (I.D. No. 15-15274), both located on Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all high-voltage, resistance grounded systems include a fail safe ground check circuit or other no less effective device approved by the Secretary to monitor continuously the grounding circuit to assure continuity. The fail safe ground check circuit shall cause the circuit breaker to open when either the ground or ground check wire is broken.

2. As an alternate method, petitioner proposes that each transformer will be connected to the ground conductor by two separate grounds, the failure of either will have no effect on the continuity of the circuit. Each skid-mounted power center or circuit breaker will be connected to two visible grounds and one cabled ground, the failure of any two of which will have no effect on the continuity of the circuit.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 2, 1987. Copies of the petition are available for inspection at that address.

Dated: February 24, 1987.

Patricia W. Silvey,
Associate Assistant Secretary for Mine
Safety and Health.

[FR Doc. 87-4408 Filed 3-2-87; 8:45 am]

BILLING CODE 4510-43-M

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify

the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: That an alternate method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register**. Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT:

The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: February 17, 1987.

Patricia W. Silvey,
Associate Assistant Secretary For Mine
Safety and Health.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION

Docket No.	FR notice	Petitioner	Reg. affected	Summary of findings
M-84-220-C	49 FR 40507	Westmoreland Coal Co.	30 CFR 75.326	Use of air from the belt haulage and/or track entries to ventilate active working places and installation of a low-level carbon monoxide detection system with specific conditions in all belt entries used as intake aircourses considered acceptable alternate method. Granted with conditions.
M-84-221-C	49 FR 40507	Westmoreland Coal Co.	30 CFR 75.1103-4(a)	Installation of a fire detection system using low-level carbon monoxide monitoring devices in all belt entries used as intake aircourses considered acceptable alternate method. Granted with conditions.
M-84-222-C	49 FR 40507	Westmoreland Coal Co.	30 CFR 75.1105	Petitioner's proposal that air currents, which are used to ventilate transformers, permanent pumps, and rectifiers, be used to ventilate active working places with specified conditions in lieu of being coursed directly into the return considered acceptable alternate methods. Granted with conditions.
M-84-225-C	50 FR 573	Maben Energy Corp.	30 CFR 75.1105	Petitioner's proposal to operate specified sump pumps without housing them in a fireproof structure or ventilating them directly into the return with specific safeguards considered acceptable alternate method. Granted with conditions.
M-84-265-C	50 FR 7147	Consolidation Coal Co.	30 CFR 75.503	Petitioner's proposal that shuttle cars use more than 600 feet of number 4 AWG cables with specified conditions considered acceptable alternate method. Granted with conditions.
M-85-9-C	50 FR 13890	Jim Walter Resources, Inc.	30 CFR 75.1002	Petitioner's proposal that 2300 A.C. high-voltage cables be located and used to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions, considered acceptable alternate methods. Granted with conditions.
M-85-57-C	50 FR 32126	Westmoreland Coal Co.	30 CFR 75.326	Use of intake air which is coursed through belt haulage and/or track entries to ventilate active working places and installation of an early warning fire detection system with specific conditions considered acceptable alternate method. Granted with conditions.
M-85-58-C	50 FR 32127	Westmoreland Coal Co.	30 CFR 75.1103-4(a)	Petitioner's proposal to install a low-level carbon monoxide detection system at specific locations considered acceptable alternate method. Granted with conditions.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION—Continued

Docket No.	FR notice	Petitioner	Reg. affected	Summary of findings
M-85-59-C	50 FR 32127	Westmoreland Coal Co	30 CFR 75.1105	Petitioner's proposal to use air currents used to ventilate dry-type transformers, permanent pumps containing no flammable liquid hydraulic oil and rectifiers to ventilate active working places, and to install an early warning fire detection system with carbon monoxide monitors considered acceptable alternate method. Granted with conditions.
M-85-62-C	50 FR 32125	Permac, Inc	30 CFR 75.214(a)	Petitioner's proposal to cover abandoned openings in the Cary and Kennedy coal seams with specific safeguards and conditions considered acceptable alternate method. Granted with conditions.
M-85-78-C	50 FR 42238	NACCO Mining Co	30 CFR 75.305	Petitioner's proposal to establish monitoring stations using carbon monoxide sensors and a methane detector where quality and quantity of all air passing through the tempering panel will be monitored considered acceptable alternate method. Granted with conditions.
M-85-79-C	50 FR 48712	NACCO Mining Co	30 CFR 75.312	Petitioner's proposal to establish monitoring stations using carbon monoxide sensors and a methane detector where quality and quantity of all air passing through the tempering panel will be monitored considered acceptable alternate method. Granted with conditions.
M-85-106-C	50 FR 47129	Marion Coal Co., Inc.	30 CFR 75.506(d) and 75.1303	Use of the nonpermissible FEMCO Ten-Shot Blasting Unit with specific safeguards considered acceptable alternate method. Granted.
M-85-107-C	50 FR 41038	Lake Coal Co., Inc	30 CFR 75.326	Petitioner's proposal to utilize 130 feet of the belt haulage entry for the purpose of directing return air to the mine surface considered acceptable alternate method. Granted with conditions.
M-85-111-C	50 FR 39186	Kanawha Coal Co.	30 CFR 75.1710	Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted.
M-85-112-C	50 FR 39186	Magnum Quality Coal Co. Inc	30 CFR 75.1710	Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted.
M-85-117-C	50 FR 47131	Tennessee consolidated Coal Co.	30 CFR 75.902	Petitioner's proposal to install a bare (non-insulated) conductor as a safety ground conductor with specific safeguards and conditions considered acceptable alternate method. Granted with conditions.
M-85-133-C	50 FR 46709	Eastern Associated Coal Corp	30 CFR 75.326	Use of air from belt haulage to ventilate active working places and installation of an early warning fire detection system with specific conditions in all belt entries used as intake aircourses considered acceptable alternate method. Granted with conditions.
M-85-136-C	50 FR 49627	Consol Pennsylvania Coal Co	30 CFR 75.1002	Petitioner's proposal to use high-voltage (4,160 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions, considered acceptable alternate methods. Granted with conditions.
M-85-141-C	50 FR 49627	Consolidation Coal Co.	30 CFR 75.305	Petitioner's proposal to establish a check point where a qualified person will take air and gas measurements on a weekly basis considered acceptable alternate methods. Granted with conditions.
M-85-143-C	51 FR 3279	Little Buck Coal Co	30 CFR 75.301	Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate methods. Granted with conditions.
M-85-145-C	50 FR 53213	C & F Coal Co, Inc	30 CFR 75.1710	Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted with conditions.
M-85-146-C	50 FR 46712	Olga Coal Co	30 CFR 75.305	Petitioner's proposal to establish an air measurement station, where the quantity, quality and the direction of the air current will be measured by a certified person considered acceptable alternate methods. Granted with conditions.
M-85-150-C	50 FR 53214	Florence Mining Co	30 CFR 75.1101	Petitioner's proposal to install either a foam generator system, single line closed head sprinkler system, or a dry chemical/water deluge system at specific remote head, belt starter and take-up units considered acceptable alternate method. Granted with conditions.
M-85-151-C	50 FR 47126	Helvetia Coal Co	30 CFR 75.1101	Petitioner's proposal to install either a foam generator system, single line closed head sprinkler system, or a dry chemical/water deluge system at specific remote head, belt starter and take-up units considered acceptable alternate method. Granted with conditions.
M-85-152-C	50 FR 47129	O'Donnell Coal Co	30 CFR 75.1101	Petitioner's proposal to install either a foam generator system, single line closed head sprinkler system, or a dry chemical/water deluge system at specific remote head, belt starter and take-up units considered acceptable alternate method. Granted with conditions.
M-85-153-C	50 FR 50358	Keystone Coal Mining Corp	30 CFR 75.1101	Petitioner's proposal to install either a foam generator system, single line closed head sprinkler system, or a dry chemical/water deluge system at specific remote head, belt starter and take-up units considered acceptable alternate methods. Granted with conditions.
M-85-157-C	50 FR 49629	Wolf Creek Collieries Co	30 CFR 75.900	Petitioner's proposal to use contactors to obtain under-voltage protection in lieu of a circuit breaker with specific conditions considered acceptable alternate method. Granted with conditions.
M-85-159-C	50 FR 53212	Badger Coal Co	30 CFR 75.326	Use of belt haulage air to ventilate active working places and installation of an automatic fire detection system on the underground belt conveyors with specific conditions considered acceptable alternate method. Granted with conditions.
M-85-160-C	50 FR 53213	Badger Coal Co	30 CFR 75.1103-4(a)	Petitioner's proposal to use a fire sensor and automatic fire detection system that will be capable of identification of fire by activated sensors rather than identification of fire within each belt flight considered acceptable alternate methods. Granted with conditions.
M-85-161-C	50 FR 53214	Martin County Coal Corp	30 CFR 75.1103-4(a)	Petitioner's proposal to use an automatic fire detection system based on carbon monoxide monitoring of the underground belt conveyors and which would provide identification of a fire within an area rather than in each belt flight considered acceptable alternate method. Granted with conditions.
M-85-176-C	50 FR 49627	Consolidation Coal Co	30 CFR 75.1700	Petitioner's proposal to plug and mine through abandoned wells penetrating the coal beds considered acceptable alternate method. Granted with conditions.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION—Continued

Docket No.	FR notice	Petitioner	Reg. affected	Summary of findings
M-85-178-C	50 FR 53216	Trophy Coal Sales	30 CFR 75.1710	Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted with conditions.
M-85-180-C	51 FR 4046	Kintzel Coal Co.	30 CFR 75.301	Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.
M-85-186-C	51 FR 3280	Midland Coal Co.	30 CFR 77.216-3(a)	Petitioner's proposal to examine the impoundments on a semi-annual basis and following major precipitation events considered acceptable alternate method. Granted.
M-85-188-C	51 FR 5616	Lackey Coals, Inc.	30 CFR 75.503	Use of a metal spring-loaded locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines considered acceptable alternate method. Granted with conditions.
M-85-194-C	51 FR 3280	New Lincoln Coal Co., Inc.	30 CFR 75.301	Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.
M-85-195-C	51 FR 4047	Scotts Branch Mining Co.	30 CFR 75.1700	Petitioner's proposal to plug and mine through abandoned wells penetrating the coal beds considered acceptable alternate method. Granted with conditions.
M-85-204-C	51 FR 8381	T & R Coal Co. Inc.	30 CFR 75.503	Use of a metal spring-loaded locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines considered acceptable alternate method. Granted with conditions.
M-85-205-C	51 FR 5616	Peabody Coal Co.	30 CFR 75.216-5	Petitioner's proposal to leave the Fresh Water Lake in its present impounding configuration and to turn it over to the current owner of the land on which it lies, who has agreed to take over its operation, inspection and maintenance considered acceptable alternate method. Granted.
M-85-206-C	51 FR 10698	Roblee Coal	30 CFR 75.503	Use of metal locking devices, each consisting of a fabricated metal bracket, in lieu of padlocks to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines considered acceptable alternate method. Granted with conditions.
M-85-209-C	51 FR 8376	D & K Coal Co., Inc.	30 CFR 75.501	Use of a metal spring-loaded locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines considered acceptable alternate method. Granted with conditions.
M-86-3-C	51 FR 8376	Eastern Associated Coal Corp.	30 CFR 75.216-5	Petitioner's proposal to leave the impounding structure in its present condition and allow the present owner to be responsible for maintenance considered acceptable alternate method. Granted.
M-86-13-C	51 FR 8379	Quarto Mining Co.	30 CFR 75.503	Use of a metal spring-loaded locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines considered acceptable alternate method. Granted with conditions.
M-86-14-C	51 FR 11850	Miami Coal Inc.	30 CFR 75.503	Use of a metal spring-loaded locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines considered acceptable alternate method. Granted with conditions.
M-86-33-C	51 FR 11847	Consolidation Coal Co.	30 CFR 75.503	Use of a metal spring-loaded locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines considered acceptable alternate method. Granted with conditions.
M-86-34-C	51 FR 11995	Pyro Mining Co.	30 CFR 75.305	Petitioner's proposal to monitor the air passing by the seals at a specific location on a weekly basis considered acceptable alternate method. Granted with conditions.
M-85-11-M	50 FR 35613	Franklin Consolidated Mines Inc.	30 CFR 75.19003	Petitioner's proposal to use a link-belt silent chain to drive the Nordberg, single drum, personnel-material hoist at the Franklin 73 shaft, until the Freighters Friend shaft becomes operable, considered acceptable alternate method. Granted with conditions.
M-85-24-M	50 FR 50358	Mississippi Lime Co.	30 CFR 75.13020	Petitioner's proposal to use the "Guardaire Model No. 80" air gun to remove dust from the employee's clothing considered acceptable alternate method. Granted with conditions.

[FR Doc. 87-4409 Filed 3-2-87; 8:45 am]

BILLING CODE 4510-43-M

LIBRARY OF CONGRESS

Copyright Office

[Docket LP 87-2]

Report of the Register of Copyrights on the Effects of 17 U.S.C. 108 on the Rights of Creators and the Needs of Users of Works Reproduced by Certain Libraries and Archives; Public Hearing

AGENCY: Library of Congress, Copyright Office.

ACTION: Notice of public hearing.

SUMMARY: The Copyright Office of the Library of Congress is preparing a report for Congress in accordance with 17 U.S.C. 108(i) which requires the Office to report to Congress every five years on the extent to which 17 U.S.C. 108 has achieved the intended balance between the rights of creators and the needs of users of copyrighted works that are reproduced by certain libraries and archives. This report is the second to be submitted, the first having been published in January, 1983. This notice announces and invites participation in the single public hearing designed to elicit views, comments, and information from all interested persons, including,

among others, authors, publishers, librarians, library patrons, and educators. The Copyright Office actively seeks the participation not only of organizational representatives, but also of any individual whose informed opinion may contribute to the preparation of the report and the possible recommendation of changes in the copyright law.

DATE/LOCATION: The hearing will be held April 8 and 9, 1987, in the Mumford Room (LM-649), James Madison Memorial Building, Library of Congress, Washington, DC. The hearing will begin the day after the Legislative Day of the National Library Week.

Anyone desiring to testify should submit a written request to testify, which should be received at the address set forth below no later than March 20, 1987. To assist the Copyright Office in scheduling witnesses and deciding whether a second day of hearings will be necessary, we urge the public to observe the date for requesting time to testify, even if written statements will be submitted later. Ten copies of written statements must be received in the Copyright Office by 4:00 p.m. on April 1, 1987.

Supplemental or reply statements will become part of the record if received by 4:00 p.m. on June 15, 1987. Ten copies of such statements should be submitted.

ADDRESSES: Written requests to present testimony and ten copies of all written statements should be submitted as follows:

If by mail: Register of Copyrights, U.S. Copyright Office, Library of Congress, Department 100, Washington, DC 20540.

If by hand: Register's Office, Room LM-403, James Madison Memorial Building, First & Independence Avenue, SE., Washington, DC

All requests to testify should clearly identify the individual or group desiring to testify and the amount of time desired. Oral presentations should not exceed ten minutes in order to reserve sufficient time for discussion of witnesses' written statements and relevant issues. The Copyright Office will attempt to contact all witnesses to confirm the times of their appearances.

FOR FURTHER INFORMATION CONTACT: Anthony P. Harrison, Assistant Register of Copyrights or Christopher A. Meyer, Policy Planning Advisor. Address: Copyright Office, Washington, DC 20559. Telephone: (202) 287-8350.

SUPPLEMENTARY INFORMATION:

1. Background and Purpose of the Report

The Copyright Act of 1976, 17 U.S.C. 101 *et seq.*, was a product of many years of effort by Congress to replace a copyright law that many experts thought was ill-suited to such technological developments of the twentieth century as cable television, computers, and photocopying machines. One of the most difficult problems to resolve concerned the photomechanical reproduction, in whole or in part, of copyrighted works by libraries and archives. In addition to codifying the doctrine of fair use for the first time (17 U.S.C. 107), the Copyright Act of 1976 contains provisions authorizing certain acts of reproduction and distribution by qualifying libraries (17 U.S.C. 108).

With these provisions, Congress sought to balance between the positions forcefully advocated by the proprietor and user communities. Because of the uncertainty about their effect, Congress provided that the Register of Copyrights should prepare, at five-year intervals, reports concerning the effectiveness of the balance created by the Copyright Act. The first such report was published in January, 1983. Copies may be obtained from: National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161 (Tel: (703) 487-4650). With appendices, the NTIS Accession Number is PB83 148239, and the price is \$100.00 (paper) or \$31.50 (microfiche). Without appendices, the NTIS Accession Number is PB83 148247, and the price is \$17.50 (paper) or \$4.50 (microfiche). Copies of the Report are also available for use in the Information Section of the Copyright Office in Room LM-401 of the James Madison Memorial Building, Library of Congress. The second report, the subject of the hearing announced here, is due January 1, 1988.

The purpose of this hearing is to examine practices under section 108 as they have developed since 1982. It would therefore be most helpful if witnesses not simply reiterate positions previously taken with respect to library copying, but amplify their remarks with a discussion of ways in which the Act has or, of equal importance, has not affected their practices, and new developments in how libraries acquire, copy, and distribute works to their patrons, particularly covering the last five years.

2. Summary of Section 108

Under section 106 of the Copyright Act of 1976, authors and other owners of copyright are given the exclusive rights, among others, to reproduce the copyrighted work in copies or phonorecords and to distribute copies or phonorecords of the copyrighted works to the public. These exclusive rights are subject to several exemptions, including those contained in section 107 ("fair use") and section 108 ("reproduction by libraries and archives").

Section 108 deals with a variety of situations involving photocopying and other forms of reproduction by libraries and archives. Subsection 108 (a) provides that—

"... it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, or to distribute such a copy or

phonorecord, under the conditions specified by this section if—

- (1) The reproduction or distribution is made without any purpose of direct or indirect commercial advantage;
- (2) The collections of the library or archives are open to the public or specialized researchers; and
- (3) The reproduced or distributed material includes a notice of copyright.

Thus, paragraph (a) of section 108 establishes the basic conditions under which a library or archives may claim an exemption from the exclusive rights of copyright proprietors. In addition, for the library activity to be exempt under section 108, one of the other conditions set forth in paragraphs (b) through (f) must be satisfied. Moreover, under paragraph (h), the exemptions for nonprofit copyrighted works are modified substantially. Very generally, with the exception of facsimile duplication for preservation purposes and to replace damaged, deteriorating, or lost copies, the exemptions of Section 108 apply primarily to books and periodicals.

Archival preservation (Section 108(b))

This exemption applies only to unpublished works in the current collection of a library or archives. It allows reproduction only in facsimile form, and only for "... purposes of preservation or security or for deposit for research use in another library or archives."

Replacement (Section 108(c))

Libraries or archives are authorized to duplicate a published work in facsimile form solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost or stolen but only if they find that an unused replacement copy cannot be obtained at a fair price. The legislative reports offer some guidance as to what is meant; they indicate that a reasonable investigation will always require recourse to commonly known trade sources in the United States, and in the normal situation also to the publisher or copyright owner or an authorized reproducing service.

Journal Articles, Small Excerpts, Etc. (Section 108(d))

This paragraph applies to "... no more than one article or other contribution to a copyrighted collection or periodical issue, or to ... a small part of any other copyrighted work." The only conditions for supplying a reproduction are that: "... the copy becomes the property of the user;" there is no reason to suppose that it "...

would be used for any purposes other than private study, scholarship, or research;" and the library or archives must display prominently, at the place where orders are accepted, and include on the order form, a warning of copyright in language prescribed by a Copyright Office regulation.

Entire Works or Substantial Parts (Section 108(e))

With one addition, the conditions applicable under paragraph (d), as discussed above, apply under paragraph (e) to the "entire work," or "a substantial part of it." The added condition is that "the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of a copyrighted work cannot be obtained at a fair price." This paragraph applies essentially to out-of-print works.

General Exemptions (Section 108(f))

In addition to the specific exemptions described above, paragraph (f) makes clear that no copyright liability attaches to a library or its employees for copying done on unsupervised copying machines provided the machines bear a warning that certain copying activities may represent an infringement of the copyright law. Also, nothing in Section 108 "... in any way affects the right of fair uses as provided by section 107 ..." and a small number of copies of an audiovisual news program may be made and distributed by lending.

Multiple and Systematic Copying (Section 108(g))

Section 108 does not permit copying when the library or archives, or its employees—

(1) Is aware or has substantial reason to believe that it is making or distributing multiple copies of the same material, whether on one or several occasions, or

(2) Engages in the systematic reproduction or distribution of copies of periodical articles or excerpts from other copyrighted works; however, certain copying for interlibrary loan purposes is permissible, even if it might otherwise appear "systematic."

Copying for interlibrary loan purposes is authorized to the extent that libraries receiving copies so made do not do so "in such aggregate quantities as to substitute for a subscription to or purchase of such work." Guidelines for interpretation of the language "such aggregate quantities ..." were adopted by Congress during its enactment of the Copyright Act, and their effectiveness is a subject of this hearing. They, as the

Act, represent a compromise between proprietary and user interests. Because they were drafted by the interested parties with the administrative support of the National Commission on New Technological Uses of Copyrighted Works (CONTU), they have come to be known as the "CONTU Guidelines." (CONTU was a temporary commission that examined certain copyright issues related to computers and photocopying in order to permit Congress to proceed with its revision of the copyright law in general).

The guidelines which were adopted provide, essentially, that copying for interlibrary loans is permissible—

(1) If no more than five requests for copies of periodical articles from any given periodical are filled for a requesting library during a calendar year, with respect to articles less than five years old. (There is no provision covering the copying of older articles);

(2) If no more than five requests for copies of excerpts of any given work are filled for a requesting library within a calendar year; and

(3) If requesting libraries state that their requests comply with the Act and keep records of their requests for three years.

3. Specific Questions

1. How have photocopying practices in libraries (including corporate libraries and information centers), archives, university communities, and copy shops changed since 1982?

2. Have new technological devices affected the so-called section 108 balance?

3. Have changes in the options offered through the Copyright Clearance Center, Inc. changed patterns of publisher membership, copying, payment, or permission seeking? Why is publisher membership not more universal than it is?

4. Do you have any data concerning photocopying that you would like made part of the record for this report?

5. Do you feel that new legislation is needed to either clarify existing legislation or to rectify any imbalance between the rights of owners and the needs of users? If you do, please specify as precisely as possible what provisions it should contain.

6. Has there been any change in authors' income in the last five years as the result of sharing in photocopying royalties? If so, please characterize such change.

Dated: February 20, 1987.

Ralph Oman,
Register of Copyrights.

Approved:

Daniel J. Boorstin,
The Librarian of Congress.
[FR Doc. 87-4358 Filed 3-2-87; 8:45 am]

BILLING CODE 1410-07-M

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50-530]

Arizona Public Service Co., et al.; Palo Verde Nuclear Generating Station, Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a partial exemption from the requirements of 10 CFR 50, Appendix A, General Design Criterion 17, "Electric Power Systems" (GDC-17), during initial plant Modes 5 and 6, to the Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority (the applicants) for the Palo Verde Nuclear Generating Station, Unit 3 located at the applicants' site in Maricopa County, Arizona.

Environmental Assessment

Identification of Proposed Action

The scheduler exemption from Appendix A of 10 CFR Part 50 for Unit 3 would allow low power licensing and initial operation in Modes 5 (cold shutdown) and 6 (refueling) with one emergency diesel generator inoperable while undergoing repair, and completion of appropriate diesel and associated system retesting. The proposed exemption is in accordance with the applicants' letter dated February 3, 1987.

The Need for the Proposed Action

The proposed Appendix A exemption is required due to the catastrophic failure, on December 23, 1986, of the Unit 3 Train B emergency diesel generator during preoperational testing. Without the proposed exemption, the applicants would have to delay fuel loading, and Unit 3 commercial operation would be subsequently delayed.

Environmental Impacts of the Proposed Action

The safety analysis events which require use of emergency diesel power are those events which assume significant reactor decay heat and a loss of offsite power. Each of the limiting loss of offsite power events are initiated from operational modes other than 5 and 6. The Unit 3 fuel has yet to be irradiated; therefore, there would be no fission products in the core and no decay heat requiring core cooling. Since core cooling is not required, emergency diesel power would not be needed.

Operation in Modes 5 and 6 with only one of two redundant emergency diesel systems available would not exceed the present safety analysis.

In summary, it would not be possible to have an accident or event of worse consequences or probability than those events previously evaluated in safety reviews and there would be no change in the environmental impacts of plant operation resulting from the proposed action.

Alternative to the Proposed Action

Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative to this exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation but would result in reduced operational flexibility and unwarranted delays in power ascension.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "FES Related to the Operation of Palo Verde Nuclear Generating Station, Units 1, 2 and 3," dated February 1982.

Agencies and Persons Contacted

The NRC staff reviewed the applicants' request and applicable documents referenced therein that support this proposed exemption. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the letter dated February 3, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Local Public Document Room in the Phoenix Public Library, Business, Science, and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Bethesda, Maryland this 24th day of February 1987.

For the Nuclear Regulatory Commission,
George W. Knighton,
Director, PWR Project Directorate No. 7,
Division of PWR Licensing-B.

[FR Doc. 87-4430 Filed 3-2-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-440, 50-441]

Cleveland Electric Illuminating Co. et al., Perry Nuclear Power Plant, Units 1 and 2; Receipt of Petition for Director's Decision

Notice is hereby given that, by a Petition served on November 7, 1986, the Sunflower Alliance, Inc. (Petitioner) requested the Nuclear Regulatory Commission reopen the record in the Perry Nuclear Power Plant operating license proceeding and consider new contentions related to emergency planning, or, alternatively, that the Commission issue an order to show cause why the facility's operating license should not be modified, pursuant to 10 CFR 2.206, on the basis of alleged emergency planning deficiencies. The operating license for Unit 1 of the Perry facility was issued on November 13, 1986 to the Cleveland Electric Illuminating Company, et al. The Commission has determined that this matter should be considered pursuant to 10 CFR 2.206.

The Petition raises a number of emergency planning issues. Specifically, the Petition alleges that "care centers" to support emergency planning for the Perry facility are not adequately prepared to deal with an emergency at the Perry facility. Further, the Petition questions the adequacy of "commitments" with a number of school districts that are to provide buses, personnel, equipment and facilities for use during an emergency. The Petition notes that in October 1986 members of the Northeast District of the Ohio Association of Public School Employees, American Federation of State, County and Municipal Employees, AFL-CIO voted not to participate in any drill or actual evacuation activities involving the Perry facility. Finally, the Petition questions whether the Ashtabula

County Medical Center is adequately staffed and prepared to handle decontamination and treatment of exposed emergency workers.

The Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. Accordingly, appropriate action will be taken on the request within a reasonable time. A copy of the Petition is available for inspection in the Commission's Public Document Room, 1717 H Street, Washington, DC 20555, and at the Local Public Document Room for the Perry Nuclear Power Plant at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Bethesda, Maryland, this 25th day of February 1987.

For the Nuclear Regulatory Commission,

James M. Taylor,
Director, Office of Inspection and
Enforcement.

[FR Doc. 87-4429 Filed 3-2-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8502]

Westinghouse Electric Corp.; Final Finding of No Significant Impact Regarding the Renewal of Source and Byproduct Material License SUA-1341 for Operation of Westinghouse Electric Corporation's Irigaray Mine, Located in Johnson County, Wyoming

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Final Finding of No Significant Impact.

(1) Proposed Action

The proposed administrative action is issuing a renewed Source and Byproduct Material License SUA-1341 authorizing Westinghouse Electric Corporation to resume operation of their Irigaray Mine located in Johnson County, Wyoming.

(2) Reasons for Final Finding of No Significant Impact

An Environmental Assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. The Environmental Assessment performed by the Commission's staff evaluated potential impacts on-site and off-site due to radiological releases which may occur during the course of the operation. The public was informed of the availability of this document by way of a December 31, 1986 Federal Register publication. The subsequent 30-day comment period expired on January 31, 1987. However, to ensure that all comments were received and

considered, the Uranium Recovery Field Office extended the comment period through Friday, February 20, 1987.

The Uranium Recovery Field Office received numerous comments of support of the Irigaray project. No commenters disagreed with the staff evaluation of the environmental impacts associated with the proposed action. The Uranium Recovery Field Office also received comments from the licensee. They were concerned that while the facility is currently in a nonoperational status, many of the proposed license conditions addressed operational oversight. In response to this, the staff prefaced several of the proposed license conditions with the clarifying statement, "during mining operations." Based on an assessment of all comments, the staff has determined that no additional impacts were identified by the commenters.

The Environmental Assessment setting forth the basis for the finding of no significant impact, as well as all written comments, are available for public inspection and copying at the Commission's Uranium Recovery Field Office, 730 Simms Street, Suite 100, Golden, Colorado, and at the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

Therefore, in accordance with 10 CFR Part 51.33(e), the Director, Uranium Recovery Field Office, made the determination to issue a Final Finding of No Significant Impact in the **Federal Register**. Concurrent with this finding, the staff will issue a renewed Source and Byproduct Material License SUA-1341 authorizing operation of Westinghouse Electric Corporation's Irigaray Mine, located in Johnson County, Wyoming.

Dated at Denver, Colorado, this 25th day of February, 1987.

For the Nuclear Regulatory Commission,
Gary R. Konwinski,

Acting Chief, Licensing Branch 1, Uranium Recovery Field Office, Region IV.

[FR Doc. 87-4427 Filed 3-2-87; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review or information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision

2. The title of the information, collection: 10 CFR 9, Public Records

3. The form number if applicable: Not applicable

4. How often collection is required: Occasionally

5. Who will be required or asked to report: Individuals requesting access to records under the Freedom of Information or Privacy Acts; individuals subject to response to subpoenas or demands of court

6. An estimate of the number of responses: 69

7. An estimate of the total number of hours needed to complete the requirement or request: 157

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable

9. Abstract:

Part 9 established information collection requirements for individuals making requests for records under the Privacy or Freedom of Information Act, and in response to subpoenas or demands of courts. It also contains requests to waive or reduce fees for searching for and reproducing NRC records in response to FOIA requests.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW, Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer Richard D. Otis, Jr., (202) 395-3084.

The NRC Clearance Officer is Brenda Jo Shelton, (201) 492-8585.

Dated at Bethesda, Maryland, this 25th day of February 1987.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 87-4428 Filed 3-2-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, March 4, 1987

Wednesday, March 11, 1987

Wednesday, March 18, 1987

Wednesday, March 25, 1987

The meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under Subchapter IV, Chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street,

NW., Washington, DC 20415 (202) 632-9710.

Thomas E. Anfinson,
Chairman, Federal Prevailing Rate Advisory
Committee.

February 24, 1987.

[FR Doc. 87-4400 Filed 3-2-87; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Section 301 India Almonds Case; Initiation of Investigation

AGENCY: Office of the U.S. Trade
Representative.

ACTION: Initiation of investigation under
section 302 of the Trade Act of 1974.

SUMMARY: Under 19 U.S.C. 2412(a), the
U.S. Trade Representative has
determined to initiate an investigation of
India's quantitative restrictions on
almond imports, tariffs on almonds, and
import licensing practices as they relate
to almond imports.

EFFECTIVE DATE: January 20, 1987.

FOR FURTHER INFORMATION CONTACT:

Ellen Terpstra, Office of Agricultural
Affairs, Office of the U.S. Trade
Representative (USTR), Room 419, 600
17th St. NW., Washington, DC 20506
(202 395-5006); or Peter Collins, Office of
Asia and the Pacific, USTR, Room 318
(same address) (202 395-6813).

SUPPLEMENTARY INFORMATION: On Jan.
6, 1987, the California Almond Growers
Exchange filed a petition under section
302 of the Trade Act of 1974, as
amended ("Trade Act," 19 U.S.C. 2412),
alleging that the Government of India
has engaged in practices affecting
imports of inshell almonds and shelled
almonds that deny rights of the United
States under a trade agreement, are
inconsistent with a trade agreement, and
cause a burden on United States
commerce. The practices complained of
are quantitative restrictions on imports
of almonds into India, import licensing
practices for almonds, and tariffs on
almonds.

On Feb. 20, 1987, the U.S. Trade
Representative initiated an investigation
of these practices, and requested
consultations with the Government of
India, as required by section 303(a) of
the Trade Act. USTR will seek
information and advice from the
petitioner and the appropriate
representatives provided for under
section 135 of the Trade Act in preparing
United States presentations for such
consultations. Any interested person is
invited to submit written comments on

the issues raised by the petition.
Comments should be filed in accordance
with the regulations at 15 CFR 2006.8
and are due no later than April 2, 1987.
Comments must be in English and
provided in twenty copies to the
Chairman, Section 301 Committee, Room
222, at the above USTR address.

Judith Hippler Bello,

Chairman, Section 301 Committee.

[FR Doc. 87-4474 Filed 3-2-87; 8:45 am]

BILLING CODE 3190-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the
Paperwork Reduction Act of 1980 (44
U.S.C. Chapter 35), the Board has
submitted the following proposal(s) for
the collection of information to the
Office of Management and Budget for
review and approval.

Summary of Proposal(s)

- (1) Collection title: Employee
Noncovered Service Pension
Questionnaire.
- (2) Form(s) submitted: G-209.
- (3) Type of request: Extension of the
expiration date of a currently approved
collection without any change in the
substance or in the method of collection.
- (4) Frequency of use: On occasion.
- (5) Respondents: Individuals or
households.
- (6) Annual responses: 15,000.
- (7) Annual reporting hours: 316.
- (8) Collection description: Under Pub.
L. 98-21, the Tier I portion of an
employee annuity may be subjected to a
reduction for benefits received based on
work not covered under the Social
Security Act or Railroad Retirement Act.
The questionnaire obtains the
information needed to determine if the
reduction applies and the amount of
such reduction.

Additional Information or Comments

Copies of the proposed forms and
supporting documents may be obtained
from Pauline Lohens, the agency
clearance officer (312-751-4692).
Comments regarding the information
collection should be addressed to
Pauline Lohens, Railroad Retirement
Board, 844 Rush Street, Chicago, Illinois
60611 and the OMB reviewer, Judy Egan
(202-395-6880), Office of Management

and Budget, Room 3208, New Executive
Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data
Management.

[FR Doc. 87-4416 Filed 3-2-87; 8:45 am]

BILLING CODE 7905-01-M

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the
Paperwork Reduction Act of 1980 (44
U.S.C. Chapter 35), the Board has
submitted the following proposal(s) for
the collection of information to the
Office of Management and Budget for
review and approval.

Summary of Proposal(s):

- (1) Collection title: Employer's
Deemed Service Month Questionnaire.
- (2) Form(s) submitted: GL-99.
- (3) Type of request: Extension of the
expiration date of a currently approved
collection without any change in the
substance or in the method of collection.
- (4) Frequency of use: Annually.
- (5) Respondents: Businesses or other
for-profit.
- (6) Annual responses: 8,000.
- (7) Annual reporting hours: 400.
- (8) Collection description: Under
section 3(i) of the Railroad Retirement
Act (RRA), the Board may deem months
of service in cases where an employee
does not actually work in every month
of the year. The collection obtains
needed service and compensation
information from railroad employers for
determining if an employee may be
credited with additional deemed months
of railroad service.

Additional Information or Comments:

Copies of the proposed forms and
supporting documents can be obtained
from Pauline Lohens, the agency
clearance officer (312-751-4692).
Comments regarding the information
collection should be addressed to
Pauline Lohens, Railroad Retirement
Board, 844 Rush Street, Chicago, Illinois
60611 and the OMB reviewer, Judy Egan
(202-395-6880), Office of Management
and Budget, Room 3208, New Executive
Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data
Management.

[FR Doc. 87-4417 Filed 3-2-87; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Information Collection Activities Under OMB Review

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon written request, copy available from: Securities and Exchange Commission, Office of Consumer Affairs, 450 5th Street NW., Washington, DC 20549.

Revised

Rev., File No. 270-293, Rule 26a-3

Rev., File No. 270-281, Form N-3

Rev., File No. 270-282, Form N-4

Rev., File No. 270-181, Form N-8B-2

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance repropose Rule 26a-3 together with proposed revisions to Forms N-3, N-4 and N-8B-2 under the Investment Company Act of 1940.

- Rule 26a-3—would exempt life insurance company separate accounts offering variable annuity contracts from provisions of the Investment Company Act of 1940 in order to permit deduction of certain risk charges from account assets. Approximately 30 companies per year will spend 20 hours on a one time basis.

- Form N-3—Registration statement form under the Investment Company Act of 1940 and the Securities Act of 1933 for separate accounts organized as open-end management investment companies. One hour for approximately 53 registrants.

- Form N-4—Registration statement form under the Investment Company Act of 1940 and the Securities Act of 1933 for separate accounts organized as unit investment trusts. One hour for approximately 183 registrants.

- Form N-8B-2—Registration statement form under the Investment Company Act of 1940 for separate accounts organized as unit investment trusts. One hour for approximately 22 registrants.

Submit comments to OMB Desk Officer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,
Secretary.

February 25, 1987.

[FR Doc. 87-4385 Filed 3-2-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24130; File Nos. 4-281 and S7-433]

Joint Industry Plans; Order Approving Amendments to the Consolidated Quotation Plan and the Consolidated Tape Association Plan Relating to Fees

On October 10, 1986, the Participants in the Consolidated Quotation Plan ("CQ Plan") and the Consolidated Tape Association Plan ("CTA Plan") submitted copies of amendments¹ to the Plan governing the operation of the consolidated quotation reporting system ("CQS") and the Plan governing the operation of the consolidated transaction reporting system ("CTS").² The proposed amendments were noticed in Securities Exchange Act Release No. 23799 (November 6, 1986), 51 FR 41553. Five comments were received.

I. Description of the Amendments

The purpose of the amendments is to restructure the Network A³ fees for professional subscribers, create contractual and fee provisions for "Other Services" (services that differ from conventional services), and to establish a single, lower fee for receipt of Network A data by non-professional subscribers. The amendments also make several conforming and technical changes.

A. Professional Fee Consolidation

Since the inception of consolidated reporting of transactions and quotes, the CTA Plan and the CQ Plan have charged separately for last sale data and quote data. In addition, the CTA Plan has charged separately for last sale interrogation and ticker display. For each of the three types of information (last sale interrogation, last sale ticker and quote interrogation), the plans have calculated charges based on the number of terminals or "devices" at each location. The plans have charged a higher fee for the first device at each location, and a much lower fee for each extra device. The Participants believe

¹ These amendments were submitted pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"). The CTA amendments also were submitted pursuant to Rule 11Aa3-1 under the Act.

² The CQ Plan and subsequent amendments are contained in File No. 4-281. The Commission approved the CQ Plan in Securities Exchange Act Release No. 16518 (January 22, 1980), 45 FR 6528. The CTA Plan and subsequent amendments are contained in File No. S7-433. The Commission approved the 1980 Restated and Amended CTA Plan in Securities Exchange Act Release No. 16983 (July 16, 1980), 45 FR 49414.

³ "Network A" refers to the facilities used to disseminate last sale and quote information for securities listed on the New York Stock Exchange ("NYSE").

that "the consequence has been a complicated rate structure that technological change has made increasingly cumbersome to administer for both the [p]articipants and data recipients alike."⁴

The amendments are designed to provide a more simplified structure, with a single fee for consolidated data. As a result, subscribers who today receive only transaction or quote data will pay the same fee as those who receive both types of data. Similarly, subscribers who today receive last sale data through only interrogation devices or only ticker display devices will pay the same fee as those who receive last sale data through a device having both functions. A subscriber under the new structure would pay an incrementally decreasing charge per unit based upon the total number of its devices receiving the consolidated information.

The amendments are designed to be revenue-neutral for the Participants.⁵ The Participants, however, expect that the simplification of recordkeeping and reporting requirements will benefit the vendors and subscribers distributing and using market data.

B. Other Services

The amendments would enable the Participants to alter the CTA Plan's vendor agreements as they apply to broker-dealers and vendors offering "Other Services",⁶ and to reduce or even eliminate contract requirements for their customers. The amendments also substantially reduce the charges applicable to Other Services.

The Participants believe this new fee and contract category will permit wider dissemination of market data by making it more readily, and less expensively, available to investors by accommodating innovative market data services that do not fit equitably within the existing charges and contract structures.

C. Non-professional Fee Consolidation and Reduction

The amendments would consolidate to a single \$4.00 fee the present monthly

⁴ Letter from John F. Cipriano, Director, Market Data Services, NYSE, to Jonathan G. Katz, Secretary, SEC, dated October 9, 1986 ("CTA letter").

⁵ Through June 1986, CTA/CQ revenues were \$3,782,000 per month; if the proposed fee had been in effect during this time, the revenues would have been \$3,767,000 per month. CTA/CQ revenues for 1985 were \$3,558,000 per month, and if the proposed fee had been in effect the revenues would have been \$3,496,000 per month.

⁶ Examples of "Other Services" are the services provided by Charles Schwab & Co., Inc., as described in note 12, *infra*.

fees of \$7.50 and \$6.00 payable by vendors in respect of non-professional Network A subscribers under the CTA Plan and the CQ Plan, respectively. The Participants expect this change to make sophisticated real-time market data services more widely available to investors.

D. Miscellaneous Changes

The amendments make several other modifications that the changes described above necessitate or that address technical or administrative issues. Because the proposed unitary professional fee structure eliminates two distinct sources of revenue for the CTA and CQ, the amendments accommodate this by combining the two plans' financial calculations and reporting. The amendments also reconcile the two plans' disparate treatment of bond data revenue. In addition, the amendments would extend the newly-combined and reduced CTA/CQ fee for non-professional subscribers to cover last sale ticker receipt. This avoids a non-professional having to pay the full professional fee of \$120.00 for ticker service. If, however, the non-professional subscriber takes a ticker feed directly from CTA, a monthly fee of \$30.00 would apply (in addition to the facilities fee and \$4.00 non-professional fee).

E. CQ Plan Changes

The changes made by the CTA Plan amendments also apply to the CQ Plan amendments except to the extent they pertain to matters that are unique to last sale information, such as the use of a low speed line. The CQ Plan amendments make two changes that are not made by the CTA Plan amendments, but that conform the CQ Plan to the CTA Plan. First, the CQ Plan makes clear that non-professional fees can be increased by a two-thirds vote. Second, the amendments state that the CQ Plan participants must pay high speed line access charges.

F. Implementation Phases

The amendments would be implemented in two phases. First, the professional fee restructuring requires substantial changes to the NYSE's billing systems. The Participants expect to implement the new professional fees during the first half of 1987 after the NYSE makes necessary software changes. Second, certain larger subscribers who face a substantial change in fees under the new structure will have the new fees phased in under "transition rules" that were filed with the amendments. These rules hold users of 100 or more devices to a 10% change,

up or down, from what their payments would be under the current schedules during the first year after implementation. The rules ease these users into the balance of the increase/decrease over the second and third year by a monthly increment of $\frac{1}{24}$ of the excess above 10%.

II. Comments

The Commission received comments from the Securities Industry Association Communications Committee ("SIA Committee");⁷ the Information Industry Association ("IIA");⁸ Monroe Securities, Inc.;⁹ Charles Schwab & Co., Inc., ("Schwab");¹⁰ and United New Mexico Trust Company ("United New Mexico").¹¹

The SIA Committee stated that the proposed simplified single fee for consolidated data will save broker-dealers substantial amounts of time, effort and money by "reducing their task to solely that of keeping track of the number of terminals." The IIA also supported the proposal, stating that it should foster a "competitive environment for the dissemination of securities information, free of inefficient and inappropriate impediments." The IIA also agreed that the current rate structure is unnecessarily complex, creates unnecessary administrative burdens, and discourages the introduction of new, innovative information services. The IIA indicated that simplification of this structure is appropriate, and that the amendments, by minimizing distinctions among users of data and types of data provided, should provide the "flexibility needed to encourage new information services and widen dissemination of information."

Schwab stated that it had negotiated for several years with the CTA concerning "new and innovative services" developed by Schwab that provide its customers with access to stock market information.¹² Schwab

believed that the information industry recently has made significant advances in communicating market information to customers and that these new services are a departure from the ways in which stock market information previously had been distributed to customers.

Schwab favored the proposed amendments concerning "Other Services" and believed that this aspect of the amendments "will establish a new and more sensible pricing structure for the services affected." Schwab also believed that the CTA and CQ Plans "have embarked on a new and more sensible pricing structure for the services affected."

Schwab, however, believed that the non-professional fees proposed in the amendments were too high. In Schwab's view, charges at the proposed level when added to non-professional fees of other securities information processors would be unacceptable to consumers. Schwab also believed that these charges were unfair "because non-professionals are being asked to pay much more than professionals, when account is taken of the relative levels of usage." While Schwab did not agree that the non-professional fees proposed in the amendments are necessary or fair, Schwab did not oppose adoption of these amendments, believing them to be "a step, however tentative, in the right direction."

Monroe Securities stated that the \$135 per month it currently pays the NYSE is very high for the occasional listed business it does, and that a lowering of its fees would be appropriate.

United New Mexico stated that it currently receives last sale information only, and thus pays \$68 a month. United New Mexico contended that the \$120 per month it will have to pay under the proposed fee would severely impact it and would require it to buy quotations, which it does not desire. United New Mexico argued that "charging a different price for different display units" seems unlawful if there is no difference in cost to provide the service, and that charging higher prices for smaller users, via the discount for larger numbers of units, may not be cost justified in that the NYSE may not be able to show that it "costs it 6% times as much to provide one person the quotation service as it does the largest user." United New Mexico also questioned that the difference in charges for professional

⁷ Letter from H. Pim Goodbody, Jr., SIA Communications Committee, to Jonathan Katz, Secretary, SEC, dated December 16, 1986.

⁸ Letter from Kenneth B. Allen, Senior Vice President, Government Relations, IIA, to Jonathan Katz, Secretary, SEC, dated December 30, 1986.

⁹ Letter from Jack Rubens, Monroe Securities Inc., to SEC, dated September 29, 1986.

¹⁰ Letter from Woodson M. Hobbs, Executive Vice President, Charles Schwab & Co., Inc., to Jonathan Katz, Secretary, SEC, dated December 16, 1986.

¹¹ Letters from Robert E. Kirchberger, Senior Vice President, United New Mexico Trust Company, to Sharon Lawson, Branch Chief, SEC, dated October 6 and December 2, 1986 ("United New Mexico letters").

¹² These services are the "Schwabquotes" service, which allows customers to obtain over the telephone real-time stock market information through an automated process involving a

computer-generated voice; the "Schwabline" service, which allows customers to obtain real-time stock market information over a leased printer located in their homes or offices; and the "Equalizer," a personal computer-based order entry system.

and non-professional subscribers, indicating that "it is hard to imagine a reasonable way to define who is what without being arbitrary and discriminatory."¹³

III. Discussion

Rule 11Aa3-2(c)(2) under the Act requires the Commission to approve an amendment to an effective national market system plan if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act. In this connection, section 11A(a)(1)(C)(iii) of the Act states that "[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure . . . the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities." As a general matter, these standards require that fees charged under the CTA and the CQ Plans be fair and reasonable.¹⁴ After careful

consideration the Commission has determined to approve the proposed amendments.

The proposed amendments, together with the comments received raise issues in three general areas: Professional fee consolidation, quantity discount pricing and non-professional fees. The proposed consolidation of professional fees is designed to provide a more simplified rate structure with a single fee for consolidated data. The Commission believes that the proposed simplified single fee for consolidated data will save receiving firms time, effort and money by eliminating the substantial administrative and recordkeeping tasks required by the current fee structure.¹⁵ The Commission recognizes that, although it is expected that the majority of subscribers with one device will experience decreased payments,¹⁶ some subscribers with one display device will pay increased charges. The Commission believes, however, that the decision to link quotation and transaction information is a justifiable business decision by the Plan Participants. Quotation and transaction information are fundamentally interrelated. Indeed, the quotation information may often provide an incomplete picture of the actual market for securities. Industry participants recognize this fact and as a result approximately 89% of present stock inquiry terminals permit access to both quotation and transaction information. In light of this overwhelming market preference, the Commission does not find it unreasonable for the CTA and CQ Plan Participants to link the dissemination of quotation and transaction information in order to realize substantial recordkeeping and billing efficiencies. Accordingly, the Commission believes that the proposed consolidated professional fees are fair and reasonable and are consistent, therefore, with section 11A(a)(1)(C)(iii) of the Act and Rule 11Aa3-2 thereunder.¹⁷

The proposed amendments also implement a new discount pricing scheme: subscribers would pay a decreasing charge per unit based upon the total number of devices on which

they receive consolidated information, without regard to where those devices are located or what features are displayed on each device.¹⁸ In its comment letter, United New Mexico argued that the proposed discount pricing scheme may not be cost justified because it could not be demonstrated with certainty that it costs 6¾ times¹⁹ as much to provide one person with the quotation service as it does the largest user.²⁰

As a preliminary matter, the Commission notes that it has approved the multiple terminal discounts currently employed under the CTA and CQ Plans.²¹ In this connection, the Commission previously has indicated that while the Act may not require exclusive processors to provide multiple terminal discounts, it is within their discretion to do so.²²

Furthermore, the instant proposed revision to the multiple terminal discounts are not designed to obtain additional revenue. Rather, these proposals are intended to allow a more rational allocation of device charges by ensuring that two subscribers, each having the same number of display devices, will pay the same fee.²³ Furthermore, the discounts reflect the fact that total CTA and CQ Plan administrative costs for any subscriber on an average per terminal basis decrease as the number of terminals increases.²⁴ For these reasons, the

¹³ The NYSE in response to United New Mexico's letter stated that "the proposed rates provide the best balance and indeed benefit the majority of subscribers." The NYSE added that the \$120 charge that would apply to United New Mexico represents just slightly less than the average charge paid by all subscribers with one display device so that while United New Mexico's charge will go up, the majority of subscribers with one device will experience a decrease. Specifically, the NYSE indicated that the average charge paid by all subscribers with one display device under the current rate schedule was \$122 per month as of January 1, 1986. This involved 801 non-member subscribers who received last sale information only, each paying \$68 per month; and 1,117 non-members who received last sale and quotation information, each paying \$158.50 per month. Under the new rate schedule, all these subscribers will pay \$120 per month. The NYSE also pointed out that the SEC previously had approved the non-professional/professional subscriber distinction, and that the distinction is quite clear. Letter from Patricia A. Hussey, Senior Consultant, Market Data Services, NYSE, to Robert E. Kirchberger, United New Mexico Trust Company, dated November 20, 1986, and letter from Thomas Haley, Senior Vice President, Market Data Services, NYSE, to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated January 13, 1987.

¹⁴ Cf. sections 6(b)(4) and 15A(b)(5) of the Act, which require that the dues, fees and other charges of self-regulatory organizations be reasonable and not unfairly discriminatory; and section 11A(c)(1)(C) of the Act, authorizing Commission rules to assure the availability of information from exclusive securities information processors on "fair and reasonable" terms.

¹⁵ See the SIA Committee and IIA letters, *supra* notes 7-8.

¹⁶ See NYSE letters, *supra* note 13. For example, a firm such as Monroe Securities which currently pays \$135 per month would pay \$120 per month under the proposal.

¹⁷ The Commission also acknowledges that smaller firms that currently receive transaction information only will experience a fee increase, and, while the Commission believes the overall fee is consistent with the Act, the Commission encourages the CTA and CQ Plan participants to monitor the operation of its revised structure to determine if relief for smaller firms is practicable.

¹⁸ See *supra*, Section I.A.

¹⁹ The fee per device for someone with 10,000 or more devices is \$17.75, while the fee for someone with one device is \$120, or 6¾ times more on a per device basis.

²⁰ See United New Mexico letters, *supra* note 11.

²¹ The original and the restated CTA Plan approved by the Commission, see *supra* note 2, contained multiple terminal discounts. The Commission approved the current CTA charges including the multiple terminal discount in Securities Exchange Act Release No. 20347 (November 3, 1983), 48 FR 51559. The CQ charges have not changed since 1980.

²² Securities Exchange Act Release No. 20874 (April 17, 1984), 49 FR 17640, at n.84 (order instituting proceedings to determine whether to approve proposed National Association of Securities Dealers fee).

²³ "In contrast, under the current structure that amount might vary significantly depending on the number of locations at which the devices are located and the different features displayed on each device." See CTA filing.

²⁴ See letter from Thomas E. Haley, Vice President, Market Data Services, NYSE to Alden Adkins, Division of Market Regulation, SEC, dated February 2, 1987. Stated otherwise, because a large portion of the total administrative costs of servicing any one subscriber do not increase as the number of terminals used by that subscriber increases, charging each subscriber the same amount for each terminal would result in overcharging the subscriber with respect to their share of administrative costs.

Commission finds these multiple terminal discounts fair and reasonable.²⁵

The third issue to be addressed is the proposed new nonprofessional fee. The Commission views the reduction of this fee from \$13.50 to \$4.00 as a substantial reduction and a positive step toward making market information more affordable and thereby more widely distributed to individual consumers.²⁶ The adoption of the "other services" provisions also should help in this regard by eliminating unnecessary contractual and other administrative burdens for non-professional subscribers.²⁷ At the same time, the Commission concurs with Schwab that the CTA and CQ Plan need to monitor these fees to ensure that they do not unnecessarily discourage consumer use of consolidated quotation and transaction information.

The Commission also believes that the other proposed amendments described above are consistent with the Act and with Rules 11Aa3-1 and 11Aa3-2.

²⁵ In this regard, the Commission does not believe—in view of the fact that these proposals do not seek to raise additional revenue and are designed to allocate fees more rationally—that it is necessary for CTA or CQ Plan participants specifically to establish that initial terminals are precisely 6½ times more "costly" than subsequent terminals. See e.g., Securities Exchange Act Release No. 20874 (April 17, 1984), 49 FR 17640, at n.71 and text accompanying n.94 and 95. Rather, the Commission believes that the plan sponsors, which are themselves membership organizations, have proposed fees that appear designed to accomplish a rational fee allocation, and unsubstantiated allegations of excessive fees, in a context where CTA and CQ presumably seek to attract as many users as possible, do not justify disrupting these allocations.

²⁶ The Commission notes that it previously has approved the non-professional fee category. See Securities Exchange Act Release No. 20239 (September 30, 1983), 48 FR 45637.

²⁷ In this connection, the Commission notes that the "other services" provisions, among other things, are designed to provide permanent fee and contractual relief with regard to broker-dealer personal computer order entry systems that provide real-time market information on a limited basis to customers buying and selling stocks from their homes. See *supra*, note 12. Because of the expense and inconvenience for individual customers of complying with the CTA and CQ Plan provisions for receipt of real-time information prior to the interim relief previously provided by the CTA and CQ Plans and made permanent in this filing, customers generally were being provided delayed information for these purposes. The Commission expressed concern that order entry based upon such delayed information might not be in the best interest of the customer, see Securities Exchange Act Release No. 21383 (October 9, 1984), 49 FR 40159, and encouraged the CTA and CQ Plan participants to accommodate these innovative systems. The Commission applauds the CTA and CQ Participants for making permanent these accommodations to personal computer order entry as well as other innovative systems.

IV. Approval of Amendments

The Commission finds that the proposed amendments to the CQ Plan and to the CTA Plan are consistent with the Act and the rules themselves, in particular section 11A(a)(1) and Rules 11Aa3-1 and 11Aa3-2.

It is therefore ordered, pursuant to section 11A of the Act, and paragraph (c)(2) of Rule 11Aa3-2 thereunder, that the amendments to the CQ Plan and to the CTA Plan be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(29).

Dated: February 20, 1987.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-4386 Filed 3-2-87; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

February 26, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Himont Inc.

Common Stock, \$1.00 Par Value (File No. 7-9697)

American Health Properties Inc.

Common Stock, \$.01 Par Value (File No. 7-9698)

Quest for Value Dual Purpose Fund, Inc.

Capital Shares, \$.01 Par Value (File No. 7-9699)

Countrywide Credit Industries, Inc.
(Delaware)

Common Stock, \$.05 Par Value (File No. 7-9700)

The Walt Disney Company (Delaware)

Common Stock, \$1.25 Par Value (File No. 7-9701)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 18, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the

Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-4424 Filed 3-2-87; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-24134 ; File No. SR-MSRB-87-1]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Municipal Securities Rulemaking Board

The Municipal Securities Rulemaking Board ("MSRB") submitted on January 7, 1987, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend MSRB rules G-12(c) and G15(a) on inter-dealer and customer confirmations, respectively, to require a specific note in the description field if the securities are subject to the federal alternative minimum tax.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 23974 (52 FR 2168, January 20, 1987). No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, the requirements of section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposal be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-4387 Filed 3-2-87; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-24133; File No. SR-OCC-86-26]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Options Clearing Corporation

The Options Clearing Corporation ("OCC"), on December 31, 1986, filed a rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The Commission is publishing this notice to solicit comments on the rule change.

The rule change amends OCC By-Law Article VI, Section 1 by adding a new Interpretation and Policy ("Interpretation") as Interpretation .01(b). This rule change will facilitate the transfer of customer accounts, including option positions, between New York Stock Exchange ("NYSE") member organizations in accord with recently adopted NYSE Rule 412.¹

OCC states that, with respect to option positions under ACATS, OCC will receive transfer of account instructions directly from the NSCC, rather than from the transferor and transferee Clearing Members. NSCC will submit only those instructions to OCC that have been entered and accepted by the transferee Clearing Member through mechanisms provided in the ACATS system.

OCC believes that the rule change adds the necessary provisions to its By-Laws to enable OCC to accept transfer of account instructions on behalf of a Clearing Member from the NSCC or from any other correspondent clearing corporation that may develop a system comparable to ACATS. OCC states that it had certain concerns regarding risks the ACATS system posed to Clearing Members, but that these concerns have been resolved to OCC's satisfaction.² In

addition, NSCC has provided OCC with a letter of indemnification with regard to the ACATS system.

OCC states that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act because it will facilitate the transfer of customers' option positions between Clearing Members, and protect investors and the public interest.

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You may submit written comment within 21 days after notice is published in the **Federal Register**. Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-86-26 and should be submitted by March 24, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: February 24, 1987.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-4388 Filed 3-2-87; 8:45 am]

BILLING CODE 8010-01-M

¹ NYSE Rule 412 requires NYSE member organizations that are members of both the NYSE and the National Securities Clearing Corporation ("NSCC") to use NSCC's newly developed Automated Customer Account Transfer Service ("ACATS") when a customer's entire account is to be transferred between them. See Securities Exchange Act Rel. No. 22663 (December 3, 1985); 50 FR 49638, which approved the adoption of NYSE Rule 412 (File No. SR-NYSE-85-17). ACATS was designed by the NSCC to facilitate the transfer of customer accounts between broker-dealers. For the approval order authorizing NSCC's adoption of ACATS, see Securities Exchange Act Rel. No. 22481 (September 30, 1985); 50 FR 41274 (File No. SR-NSCC-85-7).

² In particular, OCC was concerned because the ACATS system allows a delivering firm to delete incorrect positions while an account is pending in the three-day pending cycle. As resolved between OCC and NSCC, however, after an account has pending for three days in ACATS, NSCC on the night of pend day 3 will submit the delivering firm's instructions only. OCC will process these instructions that same night and create an

unmatched transfer and advisory transfer the next morning. Accordingly, the delivering firm and receiving firm will then have one more day to review and verify these positions prior to the transfer's being effected in the OCC system. OCC states that the addition of this extra pend day in OCC's system addresses OCC's concern by enabling Clearing Members to manage account transfer risks in the same manner as they now do under the existing OCC transfer of accounts system. Second, OCC was concerned about its need to receive transfer tapes from the NSCC no later than 4:30 p.m. Eastern Time in order for OCC to avoid delays in its daily processing. The NSCC met this concern by agreeing to a submit data to OCC by 4:00 p.m. Eastern Time.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

February 26, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Capital Holding Corporation
Common Stock, \$1.00 Par Value (File No. 7-9702)
Puget Sound Power & Light Company
Common Stock, No Par Value (File No. 7-9703)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 18, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-4426 Filed 3-2-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications by Philadelphia Stock Exchange, Inc. for Unlisted Trading Privileges and of Opportunity for Hearing

February 26, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

British Airways PLC
Interim American Depository Receipts (File No. 7-9687)

Himont, Inc.
Common Stock, \$1.00 Par Value (File No. 7-9688)

TPA of America Inc.
Common Stock, \$0.001 Par Value (File No. 7-9689)

Alexander & Alexander Services Inc.
Common Stock, \$1.00 Par Value (File No. 7-9690)

Biocraft Laboratories, Inc.
Common Stock, \$0.01 Par Value (File No. 7-9691)

Bolar Pharmaceutical Co., Inc.
Common Stock, \$0.01 Par Value (File No. 7-9692)

Echlin Inc.
Common Stock, \$1.00 Par Value (File No. 7-9693)

Entex, Inc.
Common Stock, \$1.00 Par Value (File No. 7-9694)

Crow Group, Inc.
Common Stock, \$0.10 Par Value (File No. 7-9695)

Sysco Corporation
Common Stock, \$1.00 Par Value (File No. 7-9696)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 18, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-4428 Filed 3-2-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15582; File No. 812-6624]

American Can Co., et al.; Filing of Application and Order of Temporary Exemption

February 20, 1987.

Notice is hereby given that American Can Company ("American"); Associated Madison Companies, Inc. ("Associated Madison"); Berg Enterprises, Inc.

("BEI"); American Capital Management & Research, Inc. ("ACMR"); American Capital Asset Management, Inc. ("American Management"); and American Capital Marketing, Inc. ("American Marketing") (collectively, the "Applicants"), P.O. Box 3610, Greenwich, Connecticut 06836-3610, filed an application on February 11, 1987 requesting orders of the Commission pursuant to section 9(c) of the Investment Company Act of 1940, as amended (the "Act"), that would: (i) Permanently exempt Applicants from the provisions of sections 9(a)(2) and 9(a)(3) of the Act in respect of the circumstances described below; and (ii) temporarily exempt Applicants from the provisions of sections 9(a)(2) and 9(a)(3) of the Act pending the Commission's final disposition of the application. The Applicants state that American serves, through two subsidiaries, American Marketing and American Management, as an investment advisor and principal underwriter to 27 registered open-end investment companies and three registered closed-end investment companies.

In January 1983, American acquired PennCorp Financial, Inc. ("PennCorp"), a company primarily engaged in the life insurance business. In May 1985, American acquired BEI, a company primarily engaged in mortgage banking and other real estate-related activities. At the time of their respective acquisitions by American, PennCorp and BEI were subject to separate injunctions relating, among other things, to the purchase and sale of securities. On July 8, 1974, in an action entitled *SEC v. Pennsylvania Life Insurance Company, et al.*,¹ the United States District Court for the Central District of California entered an Order of Permanent Injunction. The Order explicitly applied to PennCorp's predecessor and certain of its officers and directors who were also defendants in the action. On May 16, 1978, in an action entitled *SEC v. Berg Enterprises, Inc.*,² the United States District Court for the District of Columbia entered an Order of Permanent Injunction against BEI. BEI was the sole defendant in that action.

Section 9(a)(2) of the Act applies to persons who, by reason of any misconduct, have been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. The section prohibits these persons from serving or

acting as an employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company. Section 9(a)(3) extends these prohibitions to companies whose affiliated persons are subject to the prohibitions of section 9(a)(2).

The Applicants state that the provisions of section 9(a) could be interpreted to bar American Management and American Marketing from serving as investment adviser of, or principal underwriter for, a registered investment company. The Applicants further state that section 9(a) might also bar American and any other current or future affiliated person of American from such service in connection with a registered investment company.

Section 9(c) of the Act provides that, upon application, the Commission may grant, either unconditionally or on an appropriate temporary or conditional basis, an exemption from the provisions of section 9(a). The applicant must establish that the prohibitions of section 9(a), as applied to such person, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or the protection of investors to grant such application.

Applicants submit that the prohibitions of section 9(a) of the Act, to the extent applicable by virtue of the PennCorp and BEI injunctions, would be unduly or disproportionately severe as applied to them. Applicants also submit that their conduct has been such as not to make it against the public interest or the protection of investors to grant the application. The Applicants therefore request that the Commission, pursuant to section 9(c) of the Act, grant the following exemptions from the provisions of section 9(a):

a. An exemption with respect to service by American Management and American Marketing as investment adviser or depositor of any registered investment company, or principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face amount certificate company, whether or not any of such companies is presently in existence, notwithstanding (a) the injunction dated July 8, 1974 against PennCorp, (b) the injunction dated May 16, 1978 against BEI, and (c) the service of individuals named in or covered by such injunctions as officers or directors of American Marketing, American

¹ Civ. Action No. 74-1880 JWC (C.D. Calif., July 8, 1974), Lit. Rel. No. 6422, 4 SEC Docket 586.

² Civ. Action No. 78-0877 (D.D.C. May 16, 1978), Lit. Rel. No. 8411, 14 SEC Docket 1156.

Management, or an affiliated person thereof;

b. A temporary exemption granting the relief requested above pending final disposition of the application by the Commission; and

c. An exemption to permit any person or company which may hereafter become an affiliated person of American to serve as investment adviser or depositor of any registered investment company, or principal underwriter for any registered investment company, registered unit investment trust, or registered face amount certificate company, whether or not any of such companies is presently in existence, notwithstanding (a) the injunction dated July 8, 1974 against PennCorp, (b) the injunction dated May 16, 1978 against BEI, and (c) the service of individuals named in or covered by such injunctions as officers or directors of American Marketing, American Management, or an affiliated person thereof.

The Applicants make the following representations in support of their arguments that the prohibitions of section 9(a) as applied to them would be unduly or disproportionately severe and that their conduct has been such as not to make it against the public interest or the protection of investors to grant the application:

1. The injunctions obtained against PennCorp and BEI relate to alleged activities by those companies before they were acquired by American.

2. The injunction against PennCorp was issued in 1974 and related to activities alleged to have occurred during 1970 and 1971. The injunction against BEI was issued in 1978 and related to activities alleged to have occurred in 1972.

3. None of the defendants in either action had previously been the subject of any similar disciplinary proceedings.

4. Since the injunctions were issued, no complaints have been filed by the Commission against PennCorp, BEI, or any of the individual defendants named in the action against PennCorp.

5. None of the activities alleged in either complaint related to the activities of investment companies.

6. The managements of PennCorp, BEI, and ACMR have remained independent following their respective acquisitions by American, and American does not propose to intermingle those managements in the future. (The Application notes, however, that American would like Kenneth Berg to serve as a director of ACMR. Berg was Chairman of the Board and Chief Executive Officer of BEI during the time the activities alleged in the complaint against BEI took place.)

7. As a result of their acquisition by American, PennCorp and BEI securities are no longer publicly traded.

8. If ACMR were forced to cease its investment company management and underwriting activities it would be forced out of business, to the clear detriment of its 450 employees and its public stockholders.

9. American Management and American Marketing currently manage investment companies with assets in excess of \$15 billion.

10. American Management and American Marketing have devoted substantial resources to assemble an excellent management team and complex of resources to serve the needs of those companies. These individuals are not the types of persons against whom section 9(a) is directed.

The Commission has considered this matter and finds that the Applicants have made the necessary showing under section 9(c) of the Act for the granting of a temporary exemption.

Accordingly, it is ordered that, pursuant to section 9(c) of the Act, Applicants be and hereby are granted a temporary exemption from the provisions of section 9(a) (2) and (3) of the Act with respect to service by American Marketing and American Management as investment adviser or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company, whether or not any of such companies is presently in existence, to the extent those provisions are applicable by virtue of: (a) The injunction dated July 8, 1974 against PennCorp; (b) the injunction dated May 16, 1978 against BEI; and (c) the service of individuals named in or covered by such injunctions as officers or directors of American Marketing, American Management, or an affiliated person thereof, pending final disposition of the application by the Commission.

Notice is further given that any interested person may, not later than March 17, 1987, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application, accompanied by a statement as to the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney, by certificate)

shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-4389 Filed 3-2-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-16327]

Application and Opportunity for Hearing; Philadelphia Electric Co.

February 25, 1987.

Notice is hereby given that the Philadelphia Electric Company (the "Company") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of Fidelity Bank, National Association ("Fidelity") under an indenture heretofore qualified under the Act, and certain other indentures not so qualified, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Fidelity from acting as Trustee under one of the indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same obligor are outstanding.

The Company alleges that:

(1) Fidelity is presently acting as trustee under the First and Refunding Mortgage dated May 1, 1923, as amended and supplemented by 61 supplemental indentures (the "Mortgage Indenture"), between The Counties Gas and Electric Company, a predecessor to the Company, and Fidelity Trust Company (to which Fidelity is

successor) as Trustee, pursuant to which \$3,087,651,000 aggregate principal amount of the Company's First and Refunding Mortgage Bonds ("First Mortgage Bonds") are issued and outstanding as of December 1, 1986. The Mortgage Indenture was qualified under the Act.

(2) The Company entered into—(i) A Pollution Control Facilities Agreement dated as of October 1, 1976 with the York County Industrial Development Authority and three other public utility companies providing for the acquisition, construction, financing and sale to the Company of the cooling tower system, certain components of the gaseous and radwaste systems and the sewage plant at the Company's Peach Bottom Station; (ii) a Pollution Control Facilities Agreement dated as of February 1, 1977 with the Delaware County Industrial Development Authority providing for the acquisition, construction, financing and sale to the Company of certain components of the flue-gas scrubbing facilities, electrostatic precipitators and waste water treatment facilities at the Company's Eddystone Station and certain components of the waste water treatment facilities at the Company's Delaware Station; and (iii) a Pollution Control Facilities Agreement dated as of December 19, 1984 with the Montgomery County Industrial Development Authority providing for the acquisition, construction, financing and sale to the Company of air and water pollution control facilities and sewage or solid waste disposal facilities at the Company's Limerick Generating Station. (The pollution control facilities which are the subject of each of the foregoing facilities agreements are hereinafter sometimes individually referred to as the "Project Facilities" and each of said Facilities Agreements is hereinafter sometimes called a "Facilities Agreement").

(3) Under the applicable Facilities Agreement, each series of Pollution Control Revenue Bonds is to be payable from payments made by the Company under a series of the Company's First Mortgage Bonds issued concurrently therewith as security therefor under a supplemental indenture to the Mortgage Indenture.

(4) Under a Trust Indenture dated as of February 1, 1977 (the "York Indenture") between the York County Industrial Development Authority and Industrial Valley Bank and Trust Company ("IVB"), as Trustee, said Authority issued on February 9, 1977 \$14,200,000 aggregate principal amount of Pollution Control Revenue Bonds, 1977 Series (the "York Bonds"); under a

Trust Indenture dated as of February 1, 1977 (the "Delaware Indenture"), between the Delaware County Industrial Development Authority and IVB, as Trustee, said Authority issued on February 9, 1977 \$9,300,000 aggregate principal amount of Pollution Control Revenue Bonds, 1977 Series (the "Delaware Bonds"); and under a Trust Indenture dated as of May 15, 1985 (the "Original Montgomery Indenture"), as amended and supplemented by a First Supplemental Indenture dated as of October 1, 1985 (the "First Supplemental Montgomery Indenture") and by a Second Supplemental Indenture dated as of June 1, 1986 (the "Second Supplemental Montgomery Indenture") between the Montgomery County Industrial Development Authority and IVB, as Trustee, said Authority has issued \$320,000,000 aggregate principal amount of Pollution Control Revenue Bonds (Philadelphia Electric Company Project) in three series.

The Original Montgomery Indenture, as supplemented by the First Supplemental Montgomery Indenture and the Second Supplemental Montgomery Indenture, is referred to herein as the "Montgomery Indenture." The York Indenture, the Delaware Indenture and the Montgomery Indenture are collectively referred to herein as the "Trust Indentures." None of the Trust Indentures is qualified under the Act. Each Trust Indenture provides that additional Pollution Control Revenue Bonds may be issued thereunder. The Pollution Control Revenue Bonds heretofore issued under the Trust Indentures, together with any Pollution Control Revenue Bonds hereafter issued under the Trust Indentures, are collectively referred to herein as the "Pollution Control Revenue Bonds."

(5) Each series of the Pollution Control Revenue Bonds heretofore issued is secured by, and payable out of, payments made by the Company under a series of First Mortgage Bonds issued concurrently therewith by the Company under the Mortgage Indenture.

(6) Each series of the Company's First Mortgage Bonds heretofore or hereafter issued to secure a series of Pollution Control Revenue Bonds was issued or will be issued in an aggregate principal amount equal to, bears or will bear interest at a rate corresponding to, and has or will have the same maturity and redemption provisions as, the Pollution Control Revenue Bonds secured thereby. The Pollution Control Revenue Bonds are or will be payable from payments made by the Company under such First Mortgage Bonds. Such payments are

required to be sufficient to pay the total amount due with respect to the principal of, premium, if any, and interest on the Pollution Control Revenue Bonds as and when due. Such first Mortgage Bonds rank or will rank *pari passu* with all First Mortgage Bonds issued and outstanding under the Mortgage Indenture.

(7) On September 15, 1986, IVB merged with and into Fidelity, and Fidelity succeeded to IVB as Trustee under each of the Trust Indentures. Fidelity, in its capacity as Trustee under the Trust Indentures, will be referred to herein as the "Indenture Trustee," and in its capacity as Trustee under the Mortgage Indenture, will be referred to herein as the "Mortgage Trustee."

(8) The Company is not and will not be the issuer of the Pollution Control Revenue Bonds and is not and will not be liable thereon. Therefore, since the Company is not an obligor as defined in section 303(12) of the Act with respect to the Pollution Control Revenue Bonds, the Mortgage Indenture and the Trust Indentures may be said to create no conflict of interest as defined in section 310(b)(1) of the Act. Nevertheless, for certain reasons it could be argued that the Company is the obligor with respect to the Pollution Control Revenue Bonds or that the Pollution Control Revenue Bonds are certificates of participation or interest of the Company within the meaning of Section 301(b)(1) of the Act.

(9) The Project Facilities are subject, with substantially all of the other property of the Company, to the lien of the Mortgage Indenture. The Indenture Trustee will have no lien on or other interest in the Project Facilities other than as a holder of First Mortgage Bonds.

(10) Since, except for accrued interest on a series of Pollution Control Revenue Bonds applied to pay a portion of the initial interest payment thereon (none of which accrued interest is presently held by IVB since all such initial interest payments have been made), (i) the Pollution Control Revenue Bonds are, and Pollution Control Revenue Bonds issued hereafter will be, payable from payments made by the Company under the First Mortgage Bonds securing such Pollution Control Revenue Bonds, and (ii) in the event the Company fails to make the required payments to the Indenture Trustee, the First Mortgage Bonds issued as security therefor are the only collateral, each Trust Indenture is comparable in all material respects to a "collateral trust indenture" with respect to which an exception to section 310(b) of the Act is provided by clause (1)(B) thereof.

(11) The obligations of the Company under the Mortgage Indenture with respect to the First Mortgage Bonds are secured by a first lien on all the Company's properties, subject to minor exceptions.

(12) The Company has waived notice of hearing, and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

(13) For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, which is a public document, File No. 22-16327, in the Office of the Commission's Public Reference Section, at 450 Fifth Street, NW., Washington, DC 20549.

(14) Notice is further given that any interested person may, not later than March 18, 1987, request in writing that a hearing be held on such matter, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. Any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-4390 Filed 3-2-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending February 20, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44689

Date Filed: February 18, 1987.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 18, 1987.

Description: Application of Aeroperu pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit, effective June 12, 1987, to engage in scheduled foreign air transportation of persons property, and mail, as follows: (1) From Peru via intermediate points to the coterminous points of Miami, Florida, and New York, New York, beyond Miami to Madrid, Spain, and beyond to an additional point in Europe to be chosen by Peru, and beyond New York to Montreal, Canada, (2) from Peru via intermediate points to the coterminous points of Miami and Orlando, Florida; (3) from Peru via intermediate points to Los Angeles, California and beyond to Vancouver, Canada.

Docket No. 44691

Date Filed: February 19, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 19, 1987.

Description: Application of Tower Air, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity (or amendment of its current certificate) authorizing it to engage in scheduled foreign air transportation of persons, property and mail, on a permissive basis, between New York, NY, on the one hand, and Oslo, Norway, on the other hand.

Docket No. 44693

Date Filed: February 20, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 20, 1987.

Description: Application of Sun Country Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests permanent authority to engage in foreign charter air transportation of persons, property and mail on a permissive basis: Between a point or points in the United States and a point or points in the United Kingdom, France, Federal Republic of Germany, Sweden, Denmark and Norway.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-4413 Filed 3-2-87; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Duval County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Duval County, Florida.

FOR FURTHER INFORMATION CONTACT: David Van Leuven, District Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301, Telephone: (904) 681-7231.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation and the Jacksonville Transportation Authority, will prepare an EIS for a proposal to develop a new highway corridor between the proposed intersection of SR-9A and Monument Road to Mayport Road. The proposed project would involve the reconstruction of portions of Monument Road, Mt. Pleasant Road, and Wonderwood Drive. Missing segments would be constructed on new alignment. The length of the new corridor would be 8.5 miles. The new corridor is considered necessary to provide for the existing and projected traffic demand in the area. Also, the U.S. Navy Mayport facility located on the east end of the new corridor will be provided with alternate and more direct access.

Alternatives under consideration include: (1) Taking no action; (2) widening and constructing a multi-lane roadway with restricted access; (3) widening and constructing a multi-lane roadway with unrestricted access; (4) a combination of number 2 and number 3 above.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal. A series of public meetings will be held in Jacksonville with the first scheduled between June and September, 1987. In addition, a public hearing will be held following the completion of the Draft EIS. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be made available for public and agency review and comment. A formal scoping meeting is planned at the project site during the middle part of 1987.

To assure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on February 20, 1987.

David P. Van Leuven,
Acting Assistant Division Administrator,
Tallahassee, Florida.

[FR Doc. 87-4337 Filed 3-2-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 27, 1987.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, P.L. 96-511. Comments regarding this information collection should be addressed to the OMB reviewer listed below. IRS has requested expedited approval from OMB. Comments should be submitted to OMB at the earliest possible date.

Internal Revenue Service

OMB Number: 1545-0010

Form Number: IRS Form W-4A

Type of Review: Revision

Title: Employee's Withholding

Allowance Certificate

Additional Information: Employees file this form to tell employers: (1) The number of withholding allowances claimed, (2) the dollar amount they want withholding increased each pay period, (3) if they are entitled to claim exemption from withholding. Employers use this information to figure the correct tax to withhold from employee's wages. Section 1571 (c) of the Tax Reform Act of 1986 requires all employees to file a new Form W-4 before October 1, 1987. This form is to

be used by individuals. The estimated annual burden is 80,714,775.

OMB Reviewer: Milo Sunderhauf (202)
395-6880, Office of Management and
Budget, Room 3208, New Executive
Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Office.

[FR Doc. 87-4552 Filed 3-2-87; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Agency Survey of Veterans III Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a new collection and lists the following information: (1) The department sponsoring the survey, (2) survey title, (3) the agency form number, (4) frequency of survey, (5) who will be required or asked to respond, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to complete the survey and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the survey and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233-2146. Comments and questions about the items of the list should be directed to the VA's OMB Desk Officer, Allison Herron, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

DATED: February 24, 1987.

By direction of the Administrator.

Raymond A. Blunt,

Director, Office of Program Analysis and
Evaluation.

New Collection

1. Office of Information Management
and Statistics.

2. Survey of Veterans III.
3. SOV 21.
4. One time only.
5. Individuals or households.
6. 10,580 responses.
7. 11,215 hours.
8. Not applicable.

Revision

1. Department of Veterans Benefits.
2. Income-Net Worth and Employment
Statement in Support of Claim for Total
Disability Benefits.
3. VA Form 21-527.
4. On occasion.
5. Individuals or households.
6. 104,440 responses.
7. 95,737 hours.
8. Not applicable.

Revision

1. Department of Veterans Benefits.
2. Disabled Veterans Application for
Vocational Rehabilitation.
3. VA Form 28-1900.
4. On occasion.
5. Individuals or households.
6. 30,000 responses.
7. 7,500 hours.
8. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Transfer of (Scholastic) Credit
(Schools).
3. VA Form Letter 22-315.
4. On occasion.
5. Individuals or households; State or
local governments, Businesses or other
for-profit; Non-profit institutions; and
Small businesses or organizations.
6. 1,374 responses.
7. 229 hours.
8. Not applicable.

Revision

1. Office of the General Counsel.
2. Requirements for Recognition of
Organizations 38 CFR 14.628(e).
3. Not applicable.
4. One time only.
5. Non-profit institutions.
6. 3 responses.
7. 48 hours.
8. Not applicable.

[FR Doc. 87-4290 Filed 3-2-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 52, No. 41

Tuesday, March 3, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., March 10, 1987.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the Minneapolis Grain Exchange for designation as a contract market in High Fructose Corn Syrup-55.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-4451 Filed 2-27-87; 10:57 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., March 10, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-4452 Filed 2-27-87; 10:57 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., March 27, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-4453 Filed 2-27-87; 10:57 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:45 a.m., March 27, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-4454 Filed 2-27-87; 10:57 am]

BILLING CODE 6351-01-M

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 3, 1987, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT:

Kenneth J. Auberger, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703) 883-4010.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

1. Final Regulations:
 - Part 606—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the FCA
 - Consideration of Comments from the Public on Final Regulations:
 - Part 611—Farm Credit System Capital Corporation; Organization
2. Consideration of Agency Policy on Approving the Compensation of Chief Executive Officers of Farm Credit Banks
3. FCS Building Association Matters
- *4. Examination and Enforcement Actions
 - *Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (4), (8) and (9).
 - Dated: February 26, 1987.

Kenneth J. Auberger,

Secretary, Farm Credit Administration Board.

[FR Doc. 87-4476 Filed 2-27-87; 1:34 pm]

BILLING CODE 6705-01-M

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the regular meeting of the Farm Credit Administration Board (Board) scheduled for February 23, 1987, has been rescheduled to February 26, 1987.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 26, 1987, from 8:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT:

Kenneth J. Auberger, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703) 883-4010.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

1. Approval of Minutes of January Meeting.
2. Proposal to Prohibit Persons from Serving Concurrently as the Chief Executive Officer of a Farm Credit Bank and an Association.
- *3. Examination and Enforcement Matters.
- *Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (4), (8) and (9).
- Dated: February 26, 1987.

Kenneth J. Auberger,

Secretary, Farm Credit Administration Board.

[FR Doc. 87-4475 Filed 2-27-87; 1:34 pm]

BILLING CODE 6705-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 4-87]

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Oral Hearings on objections to decisions issued under the Ethiopian Claims Program:
 Thur., March 19, 1987 at 10:00 a.m.:
 E-013—Saba Habachy, et al.
 E-020—Continental Homes.

Thur., March 19, 1987 at 2:30 p.m.:

Consideration of Proposed Decisions on claims under the Ethiopian Claims Program and Final Decisions on objections filed to Proposed Decisions on claims under the Ethiopian Claims Program.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111—20th Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111—20th Street, NW., Room 400, Washington, DC 20579. Telephone: (202) 653-6155.

Dated at Washington, DC on February 27, 1987.

Judith H. Lock,

Administrative Officer.

[FR Doc. 87-4497 Filed 2-27-87; 1:36 pm]

BILLING CODE 4410-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF

PREVIOUS ANNOUNCEMENT: (52 FR 4567 February 12, 1987).

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Monday, February 9, 1987.

CHANGE IN THE MEETING: Additional item.

The following item was considered at a closed meeting on Wednesday,

February 18, 1987, following the 10:00 a.m. open meeting:

Proposed order in administrative proceeding of an enforcement nature.

Commissioner Peters, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Potel at (202) 272-2014.

Jonathan G. Katz,

Secretary.

February 26, 1987.

[FR Doc. 87-4477 Filed 2-27-87; 1:35 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register

Vol. 52, No. 41

Tuesday, March 3, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86N-0438]

Dimetridazole; Opportunity For Hearing

Correction

In notice document 86-28203 beginning on page 45244 in the issue of Wednesday, December 17, 1986, make the following corrections:

1. On page 45246, in the third column, in the third paragraph, in the tenth line, after "study", insert "are discussed".

2. On page 45247, in the third column, in the last paragraph, in the seventh line, "R" should read "R₁".

3. On page 45252, in the second column, in the eleventh line, "hydroxyethyl" was misspelled.

4. In the same column, in the last paragraph, in the fifth line remove the "/" after the "2".

5. On page 45253, in the second column, in the last paragraph, in the ninth line, "HMMI" should read "HMMNI".

6. On page 45257, Table 11 is corrected to read as follows:

TABLE 11—CONCENTRATION OF DIMETRIDAZOLE (PPM)

Tissue	Drug level (percent)	Withdrawal time (hours)							
		0	3	6	12	24	48	72	96
Muscle.....	0.1	11.56	5.75	5.24	3.31	0.22	0.08	0.05	0.06
	0.2	12.72	12.40	8.66	(*)0.29	1.04	0.23	(*)	(*)0.06
Liver.....	0.1	15.20	6.52	6.96	4.75	0.48	<.05	<.05	0.06
	0.2	14.88	14.68	8.50	(*)0.21	1.07	0.24	(*)	(*)0.16
Kidney.....	0.1	6.80	0.88	1.65	1.42	0.10	<.05	<.05	<.05
	0.2	17.76	12.44	6.75	(*)0.90	0.14	0.14	(*)	(*)0.08
Fat.....	0.1	7.40	3.41	2.99	1.81	0.10	<.05	0.08	<.05
	0.2	(*)	0.03	2.69	(*)	0.69	0.29	(*)	(*)0.11
Skin.....	0.1	7.40	3.90	3.84	3.12	0.26	0.10	0.07	0.06
	0.2	15.68	6.60	6.67	0.27	0.75	0.22	(*)	(*)0.10

(*) = Value calculated from 1 bird.

(*) = Birds not available at this withdrawal period.

(*) = Insufficient sample for analysis.

7. On page 45261, in the third column, in paragraph 58, in the fourth line, "oxidase" was misspelled.

8. In the same column, in paragraph 64, in the fourth line, "Mammalian" was misspelled.

9. On page 45262, in the first column, in paragraph 73, in the first line, insert "Inc." after "Clark".

10. In the third column, in the second complete paragraph, in the ninth line, remove the last "2".

BILLING CODE 1505-01-D

The first part of the paper discusses the importance of the study of the history of the United States. It is argued that a knowledge of the past is essential for a full understanding of the present. The author then proceeds to a detailed examination of the early years of the Republic, from the time of the signing of the Declaration of Independence to the end of the War of 1812. This section covers the political, social, and economic developments of the period, and the role of the various states in the formation of the new nation. The author also discusses the influence of foreign powers on the young United States, and the challenges faced by the government in its early years. The second part of the paper deals with the period from 1812 to 1860, a time of rapid growth and change. It examines the expansion of the territory, the development of the economy, and the rise of the industrial revolution. The author also discusses the growing tensions between the North and the South, and the role of slavery in the national debate. The final part of the paper covers the period from 1860 to 1890, a time of great conflict and transformation. It discusses the Civil War, the Reconstruction period, and the rise of the Gilded Age. The author concludes by reflecting on the legacy of the past and the challenges of the future.

Final Regulations

**Tuesday
March 3, 1987**

Part II

**Department of the
Treasury**

Internal Revenue Service

26 CFR Parts 1 and 602

**Income Taxes—Foreign Sales Corporation
Provisions; Final, Temporary and
Proposed Rules**

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8126]

**Income Tax for Taxable Years
Beginning After December 31, 1953;
FSC Transfer Pricing Rules,
Distributions, Foreign Tax Credit and
Other Special Rules for FSC's**

AGENCY: Internal Revenue Service,
Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary Income Tax Regulations concerning the rules for application of the foreign sales corporation (FSC) transfer pricing rules, for distributions from a FSC, for treatment of losses of a FSC, for sourcing and Classification of a FSC's income, for computation of exempt foreign trade income, for computation of the FSC's and the FSC's United States shareholder's foreign tax credits, for definitions of foreign trading gross receipts, export property and gross receipts, for effect of boycott participation on FSC benefits, and for sourcing a related supplier's income if the transfer pricing rules are used to compute the FSC's profit. These temporary regulations provide immediate guidance necessary to FSC's and their shareholders with respect to provisions under Title VIII of the Tax Reform Act of 1984 (Foreign Sales Corporations). These temporary regulations do not reflect the provisions of the Tax Reform Act of 1986, H.R. 3838, 99th Cong., 2d Sess., 132 Cong. Rec. 7351 (1986). In addition, this document contains temporary Income Tax Regulations providing transition rules for domestic international sales corporations. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

DATES: These temporary regulations apply to taxable years beginning after December 31, 1984, and are effective after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-6384, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary Income Tax Regulations (26 CFR Part 1) under sections 921 and 923 through 927 of the Internal Revenue Code of 1954.

Need for Temporary Regulations

The proper application of sections 921 and 923 through 927 is dependent upon the Internal Revenue Service's detailed specifications of the manner in which the requirements of the statute will be administered. Because of the need for immediate guidance in this regard, the Internal Revenue Service has found it to be impractical to issue these temporary regulations either with notice and public comment procedure under section 553(b) of Title 5 of the United States Code, or under the effective date limitation of section 553(d) of Title 5.

Explanation of Provisions

General Background

In response to contentions made by the signatories of the General Agreement on Tariffs and Trade (GATT) that the existing tax deferral for domestic international sales corporations (DISCs) was an illegal export subsidy because of the failure to charge interest on the deferred taxes, Congress in the Tax Reform Act of 1984 imposed an interest charge on reduced DISC tax deferral (see section 995(b)(1) (E) and (F) and section 995(f)) and, in addition, established FSCs as a primary vehicle to promote exports. Generally, under sections 921 through 927 of the Internal Revenue Code as enacted in 1984, if a FSC maintains a presence outside the United States, is managed outside the United States, performs certain sales and economic process activities outside the United States (see §§ 1.922-1, 1.924(c)-1, 1.924(d)-1, 1.924(e)-1 and 1.925(a)-1T(b)(2)(ii)) and deals with its related persons at arm's length, part of the FSC's income will be exempt from United States taxation. This system of taxation was designed to satisfy GATT decisions that a country is not required to tax export income attributable to economic processes located outside of its territorial limits if that income is earned on an arm's length basis.

Statutory Provisions

Section 921 provides special characterization and sourcing rules for a FSC's income. In addition, the section provides for the allocation and apportionment of deductions between exempt foreign trade income and nonexempt foreign trade income and for the denial of certain tax credits in determining the taxable income of the

FSC. Sections 923 and 925 provide rules for computation of the FSC's exempt foreign trade income and transfer prices, respectively. Section 924(a) provides definitions of foreign trading gross receipts. Section 926 provides guidance as to ordering and treatment of distributions to FSC shareholders. Section 927 provides special rules including definitions of export property and gross receipts, the effect of boycott participation on FSC benefits and sourcing rules for a person related to a FSC if the transfer pricing rules are used to compute the FSC's income. The Tax Reform Act of 1984 also modified other sections of the Code in order to reflect the effect of the FSC provisions. Section 275 was amended to provide that a deduction is not allowed with respect to taxes paid or accrued attributable to a FSC's foreign trade income. Sections 901 and 906 were amended to provide special rules for foreign tax credits.

Transition DISC Rules

These regulations amend § 1.921-1T(a)(4) by adding a new question and answer Q&A-4A to provide that commissions need not be paid by the DISC's related supplier to the DISC if the date payment is required under § 1.994-1(e)(3) is after December 31, 1984.

These regulations also amend § 1.921-1T(a)(9) by adding a new question and answer Q&A-11A. The new question and answer provides that a former DISC does not need to remain in existence in order for the former DISC's shareholders to take advantage of the 10-year spread provided for in section 995(b)(2) with respect to the former DISC's disqualification.

Section 1.921-1T(a)(10) is also amended by these regulations by adding a new question and answer Q&A-12A. The question and answer provides that a shareholder which is permitted to include its 1984 DISC deemed distribution in income over a 10-year period may, nevertheless, receive the amount of such deemed distribution from the former DISC prior to the period in which the shareholder is required to take the distribution into income.

In addition, § 1.921-1T(b)(1), Answer (1), is amended to provide that a corporation which was a DISC as of December 31, 1984, may elect interest charge DISC status by filing Form 4876A on or before July 1, 1987. Also, the answer is amended to provide that the election to be a FSC (or a small FSC) may be made during the first 90 days of any taxable year of a corporation if the corporation had in a prior taxable year elected small FSC (or FSC) status and if

the corporation revokes that small FSC (or FSC) election within the 90 day period during which election of FSC (or small FSC) status is allowed under this special rule. Also, the answer is amended to provide that if a corporation which has elected FSC, small FSC or interest charge DISC status, or a shareholder of that corporation, is acquired in a qualified stock purchase under section 338(d)(3), and if an election under section 338(a) is effective with regard to that acquisition, the corporation may re-elect FSC, small FSC or interest charge DISC status (whichever is applicable) not later than the date of the election under section 338(a), see section 338(g)(i) and § 1.338-1T(c). This re-election is necessary because the original elections are deemed terminated if an election is made under section 338(a).

Section 1.921-1T(b)(12), Answer (12), is amended to provide that costs incurred and activities performed by a related supplier prior to January 1, 1985 (or prior to the effective date of a corporation's election to be treated as a FSC) with respect to transactions occurring after January 1, 1985 (or after the effective date of a corporation's election to be treated as a FSC) need not be taken into account for purposes of computing the FSC's profit under section 925 but are treated for section 925(c) purposes as if they were performed on behalf of the FSC.

General FSC Rules

Section 1.921-3T(a) provides general rules for determination of the source and characterization of the various types of FSC income. The FSC's foreign trade income that is exempt under section 923 and § 1.923-1T is treated as foreign source income that is not effectively connected with a United States trade or business. The FSC's non-exempt foreign trade income determined under the administrative pricing methods is treated as United States source income which is effectively connected with a United States trade or business. The FSC's investment income and carrying charges are treated under section 921(d) as income effectively connected with a United States trade or business. The source of that income is determined by the generally applicable source rules of sections 861 and 862 and not by section 921(d). Finally, the source and taxation of the FSC's non-exempt foreign trade income determined without regard to the administrative pricing rules and its non-foreign trade income other than investment income and carrying charges are not affected by sections 921 through 927. Section 1.921-3T(b) provides that the regulations under § 1.861-8 will

apply to allocate and apportion the FSC's expenses between the FSC's foreign trade income and its non-foreign trade income. The expenses allocated and apportioned to the FSC's foreign trade income will be allocated between its exempt and non-exempt foreign trade income on a proportionate basis. Expenses allocated to the exempt income shall be disallowed under sections 265 and 882(c).

Section 1.921-3T(c) provides rules for the treatment of the FSC's net operating and capital losses, both in the year in which they occur and in the carryback and carryover years. The regulation provides special ordering rules for applying loss carrybacks and carryovers to earnings and profits accounts segregated by type of income. Section 921(c) and § 1.921-3T(d) provide that a FSC is entitled to the foreign tax credit, the credit for tax withheld at source on foreign corporations and the certain uses of gasoline and special fuels credit. The regulations provide, however, that the FSC is entitled to the foreign tax credit of section 906 only to the extent that the creditable foreign income, war profits and excess profit taxes (or foreign taxes in lieu thereof) paid or accrued are attributable to the FSC's foreign source non-foreign trade income which is effectively connected with its conduct of a trade or business within the United States. The regulations provide that the deemed paid credit of section 902 may be available to the domestic corporate shareholder of a FSC on distributions from the FSC to the extent the distribution is attributable to the FSC's section 923(a)(2) non-exempt income and its non-foreign trade income. The regulations also provide that the foreign tax credit allowed by sections 901 and 903 for tax withheld at source may be available to a FSC's shareholder on distributions from the FSC to the extent the distribution is attributable to the FSC's section 923(a)(2) non-exempt income and its non-foreign trade income. Also, the regulations provide rules for computing the separate limitations for both the FSC direct foreign tax credit with regard to the FSC's foreign trade income and the credits for FSC shareholders for distributions from a FSC attributable to the FSC's foreign trade income. Section 1.921-3T(e) provides that income, war profits and excess profits taxes imposed on a FSC by a foreign country may not be deducted if they are attributable to the FSC's foreign trade income.

Section 1.921-3T(f) provides that a FSC generally is required to pay estimated income taxes because it is subject to the corporate income tax.

Section 1.921-3T(g) provides that the accumulated earnings, personal holding company and foreign personal holding company provisions generally apply to the FSC to the extent they apply to other foreign corporations.

The regulations under § 1.921-3T(h) provide that the Subpart F provisions of sections 951 through 964 do not apply to a FSC's foreign trade income other than its section 923(a)(2) non-exempt income. In addition, the subpart F provisions do not apply to a FSC's investment income and carrying charges because that income is income deemed to be effectively connected to a United States trade or business.

Section 1.921-3T(i) provides that section 1248 does not apply to a FSC's earnings and profits attributable to foreign trade income.

Section 1.921-3T(j) provides that the limitations of sections 1561 and 1563 on certain multiple tax benefits apply to a FSC and its controlled group.

Foreign Trade Income

Section 1.923-1T provides that the foreign trade income of a FSC is the FSC's gross income attributable to its foreign trading gross receipts. If the FSC is the principal on the sale of export property which it purchased from a related supplier, for purposes of computing the FSC's foreign trade income, the FSC's gross income is arrived at by subtracting from its foreign trading gross receipts the transfer price determined under the transfer pricing methods of section 925(a). If the FSC is the commission agent on the sale of export property by its related supplier, for purposes of computing the FSC's foreign trade income, the FSC's gross income is the commission paid or payable by the related supplier to the FSC with respect to the transactions that would have generated foreign trading gross receipts had the FSC been the principal on the transaction.

Exempt Foreign Trade Income

Section 1.923-1T(b)(1)(i) provides that unless a FSC has non-corporate shareholders, 15/23 of the FSC's foreign trade income is exempt foreign trade income if the foreign trade income is determined through use of the administrative pricing rules of section 925. If a FSC has non-corporate shareholders, 16/23 of its foreign trade income attributable to the non-corporate shareholders' proportionate interest in the FSC is exempt foreign trade income. Section 1.923-1T(b)(1)(ii) provides that if the administrative pricing rules are not used to determine the FSC's foreign trade income 30 percent of the foreign

trade income is treated as exempt (32 percent of the foreign trade income attributable to the non-corporate shareholders' proportionate interest). Special calculations of a FSC's exempt foreign trade income are to be made if it has qualified cooperatives as shareholders and if the foreign trade income arises from marketing of agricultural or horticultural products (or from the providing of related services) sold to the FSC by the qualified cooperatives or if it sells military property (see § 1.923-1T (b)(2) and (b)(3), respectively).

Definition of Foreign Trading Gross Receipts

Section 1.924(a)-1T provides definitions of foreign trading gross receipts of a FSC. In general, foreign trading gross receipts arise from:

- (1) Sales of export property,
- (2) Leases of export property,
- (3) Rendering of services related and subsidiary to a sale or lease of export property which results in foreign trading gross receipts,
- (4) Providing engineering or architectural services on foreign construction projects, and
- (5) Rendering of managerial services in certain clearly defined situations.

The detailed definitions of foreign trading gross receipts of a FSC are taken in all important respects from the definition of qualified export receipts of a DISC at § 1.993-1. These regulations provide, however, an additional rule which limits receipts within a controlled group, § 1.924 (a)-1T(g)(6)(i)(C), from foreign trading gross receipts classification. Under this rule, a sale by a FSC of export property which the FSC purchased from a non-FSC member of the same controlled group will not result in foreign trading gross receipts if the sale follows any sale of the same export property by a FSC within the same controlled group if foreign trading gross receipts resulted from that sale. This rule also applies in the commission FSC context. In addition, these regulations provide that:

- (1) If a related supplier factors receivables at a discount, the discount will reduce foreign trading gross receipts, see § 1.924 (a)-1T(g)(7);
- (2) Interest and carrying charges are not foreign trading gross receipts; and
- (3) Receipts from leases and the furnishing of services, as well as from sales, will not be foreign trading gross receipts if accomplished by a subsidiary, as listed in § 1.924 (a)-1T(g)(3), granted by the United States or an instrumentality thereof; and
- (4) Receipts from sales made under the Foreign Military Sales direct credit

program (22 U.S.C. 2763) or the Foreign Military Sales loan guaranty program (22 U.S.C. 2764) will not be foreign trading gross receipts if the borrowing country is released from its contractual liability to repay the United States government with respect to those credits or guaranteed loans, the repayment period exceeds twelve years, or the interest rate charged is less than the market rate of interest as defined in 22 U.S.C. 2763(c)(2)(B). These receipts will be foreign trading gross receipts, however, if the FSC shows to the satisfaction of the Commissioner that, under the conditions existing at the time of the sale, the purchaser had a reasonable opportunity to purchase, on competitive terms from a seller who was not a U.S. person, goods which were substantially identical to this property and which were not manufactured, produced, grown, or extracted in the United States, see § 1.924(a)-1T(g)(3)(vi).

(5) Receipts from sales by an FSC to the Department of Defense for resale in post and base exchanges and commissary stores located on United States military installations in foreign countries will not be excluded from the definition of foreign trading gross receipts because of section 924(f)(1)(A)(ii), see § 1.924(a)-1T(g)(4)(i).

Transfer Pricing Rules

The regulations under section 925, transfer pricing rules for FSCs, are organized as follows. Section 1.925(a)-1T(a) sets forth the scope of the temporary regulations. Section 1.925(a)-1T(b) describes the transactions to which the temporary regulations are applicable. Section 1.925(a)-1T(c) details how the transfer prices for sales of export property are to be computed. Section 1.925(a)-1T(d) provides rules for the application of the gross receipts and combined taxable income administrative pricing rules of section 925(a) (1) and (2) to transactions other than sales by an FSC. Special rules for applying § 1.925(a)-1T (c) and (d) are provided by § 1.925(a)-1T(e). Section 1.925(a)-1T(f) provides examples of application of the provisions of § 1.925(a)-1T. Section 1.925(b)-1T provides marginal costing rules for computing combined taxable income for purposes of the combined taxable income method of section 925(a)(2).

Transactions to which Section 925 Applies

Section 1.925(a)-1T(b) describes the transactions to which the temporary regulations under section 925 are applicable. In general, section 925 applies only if the transaction, or group of transactions, gives rise to foreign

trading gross receipts to the FSC if it is operating as the principal on the transaction or would have given rise to foreign trading gross receipts had the FSC been the principal rather than the commission agent on the transaction. The section 482 transfer pricing method of section 925(a)(3) may be applied to any transaction between a related supplier and the FSC. The administrative pricing rules of sections 925(a) (1) and (2) may be applied, however, only if the FSC earns on the transaction the same type of income as the related supplier earned on the transaction. For example, the administrative pricing methods are not applicable to determine the FSC's profit, if any, if it rents export property that it purchased from the related supplier. In addition, under section 925(c), the administrative pricing rules may be used only if the FSC, or person acting on behalf of the FSC, performs all the activities described in sections 924(d)(1)(A) and 924(e) that are attributable to a particular transaction. If a related supplier is performing the required activities on behalf of the FSC, § 1.925 (a)-1T (a)-1T(b)(2)(ii) provides that the requirements of section 925(c) will be met if the FSC pays the related supplier an amount equal to the direct and indirect expenses related to the required activities. This payment must be reflected on the FSC's books and must be taken into account in computing the FSC's and related supplier's combined taxable income. If it is determined that the related supplier was not compensated for all its expenses incurred relating to the required activities or if the payment is not reflected on the FSC's books or in computing combined taxable income, the administrative pricing methods may be used but proper adjustments will be made to the FSC's and related supplier's books or income. At the election of the FSC and related supplier, the requirements of section 925(c) will be deemed to have been met if the FSC pays the related supplier an amount equal to all of the expenses (other than cost of goods sold) which relate to the sale of export property (see § 1.925(a)-1T(c)(6)(iii)(D)) other than expenses relating to activities performed directly by the FSC or by a person other than the related supplier, and if that payment is reflected on the books of the FSC and in computation of the FSC's and related supplier's combined taxable income. If it is determined that the related supplier was not compensated for all its expenses or if the entire payment is not reflected on the FSC's books or in computing combined taxable income,

the administrative pricing methods may be used but proper adjustments will be made to the FSC's and related supplier's books or income.

Transfer Prices for Sales of Export Property

Section 1.925(a)-1T(c) provides rules on how the transfer prices for sales of export property by a related supplier to a FSC are to be computed. Under the 1.83 percent gross receipts method of section 925(a)(1), the transfer price on the sale of export property from a related supplier to the FSC is that price which permits the FSC to earn a profit on the later resale of the export property in the amount of 1.83 percent of the foreign trading gross receipts from the sale. Pursuant to section 925(d), this profit may not exceed an amount equal to twice the profit determined under, at the related supplier's election, either the full costing combined taxable income method of §§ 1.925(a)-1T(c) (3) and (6) or the marginal costing rules of § 1.925(b)-1T. For FSC taxable years beginning after December 31, 1986, if the marginal costing rules are used, the FSC's profit may not exceed 100% of full costing combined taxable income as determined under §§ 1.925(a)-1T(c) (3) and (6). This limitation reflects Congressional intent, as stated in Senate Report 98-169, Tax Reform Act of 1984, page 649, that the administrative pricing rules should be applied so as to prevent pricing at a loss to the related supplier.

Under the combined taxable income method of section 925(a)(2), the transfer price between the related supplier and the FSC is that price which permits the FSC to earn a profit in the amount of 23 percent of the related supplier's and FSC's combined taxable income. Under the section 482 method of section 925(a)(3), the transfer price between the related supplier and the FSC is determined under the arm's length standards of section 482.

Full costing combined taxable income of the related supplier and the FSC is defined in §§ 1.925(a)-1T(c) (3) and (6) as the excess of the FSC's foreign trading gross receipts from the sale over the total costs of the related supplier and FSC relating to the sale. If the related supplier performs services on behalf of the FSC relating to the sale, the FSC must compensate the related supplier by an arm's length amount, which is determined on a cost reimbursement basis. In computing combined taxable income, the FSC and related supplier may use the accounting methods they use to compute their taxable incomes. However, a FSC which is a member of a controlled group may not use an accounting method that when

applied to transactions between the FSC and members of its controlled group results in a material distortion of the income of the FSC or any other member of the controlled group. Costs, both direct and indirect, are to be allocated and apportioned to the items or classes of gross income resulting from the transaction or group of transactions. The deduction for depletion allowed by section 611 is treated as relating to gross receipts from a sale of export property and shall be taken into account in computing the combined taxable income of the FSC and its related supplier from that sale.

The Internal Revenue Service considered for purposes of computing the related supplier's allowable percentage depletion deduction under section 613 whether the related supplier's taxable income from the sale of the export property should include the profit earned by the FSC under the transfer pricing rules of section 925. This approach was rejected since the amount of the related supplier's percentage depletion deduction would be partially dependent on income earned by the FSC which is exempt from taxation under section 921.

In making the determinations of transfer price, § 1.925(a)-1T(c)(8)(ii) provides that the related supplier and FSC if the FSC is the principal on the sale, or the related supplier if the FSC is a commission agent on the sale, may elect to group the sale transactions under either of two standards: recognized trade or industry usage or the two digit major groups (or any inferior classifications or combinations, thereof, within a major group) of the Standard Industrial Classification. For these purposes, however, a product may be included in only one product group even though under the classifications it would otherwise be included in more than one group. If an election is made to group on a product or product line basis, all transactions involving that product or product line must be included. An exception to the requirement to group all transactions of a product or product line apply, however, with regard to transactions involving agricultural or horticultural products if a qualified cooperative shareholder of the FSC sold those products to the FSC. This exception provides that, if the related supplier elects to group those agricultural or horticultural products, no other export property may be included within that group. Export property that would have been grouped under the general grouping rules with those agricultural or horticultural products may be grouped, however, at the

election of the related supplier, under the general grouping rules. A similar special grouping rule applies with regard to transactions involving military property.

If there is more than one FSC within a controlled group, an election to group must apply to all member FSCs and the same transfer pricing rule must be used with respect to all transactions involving grouped sales (or services) sold or leased by all the FSCs.

These regulations provide at § 1.925(a)-1T(c)(5) that, if a sale of export property is made by the related supplier to the FSC and the resale by the FSC is not made before the close of the FSC's taxable year, the transfer price to the related supplier in the year of transfer to the FSC will equal the related supplier's costs. The transfer price will be adjusted in the year that the FSC resells the export property.

Rules Under Section 925(a) (1) and (2) for Transactions Other Than Sales by a FSC

Section 1.925 (a)-1T(d)(1) provides that, with regard to the situation in which an FSC has rented export property from its related supplier and subleases that property to a third party, the rental which the FSC must pay the related supplier, if either of the administrative pricing rules of section 925(a) (1) or (2) is used to determine the FSC's foreign trading gross receipts, must be computed in a manner consistent with the rules covering determination of the transfer prices in sale transactions. In general, the grouping rules for sales transactions apply to lease transactions. However, lease transactions are not to be grouped with sale transactions.

Section 1.925(a)-1T(d)(2) provides that the rules applicable to sales of export property by the related supplier to a FSC (§ 1.925(a)-1T(c)) generally apply to transactions involving sales, leases or services if the FSC is a commission agent of the related supplier. The rules apply, however, only if the gross receipts which the related supplier earns on the transaction would have been foreign trading gross receipts had they been earned by the FSC as principal. In computing the taxable income of the FSC under both the combined taxable income method and the gross receipts method, if the FSC is a commission agent for its related supplier, the related supplier's gross receipts are substituted for the FSC's foreign trading gross receipts that would have been used if the FSC had been the principal on the transaction. Carrying charges are computed on the related supplier's gross

receipts. Any carrying charges so computed reduce the related supplier's gross receipts for purposes of computing the commission FSC's profit. The maximum commission that may be charged the related supplier is the FSC's expenses plus the FSC's profit determined under the administrative pricing rules. If a related supplier factors an account receivable which arose from a sale of export property at a discount to a member of the same controlled group, the gross receipts from the sale will be reduced by the amount of the discount.

Section 1.925(a)-1T(d)(3) provides that the receipts from related and subsidiary services relating to export sale transactions are treated as income from the export sale transactions if they are received in the same taxable year as the receipts from the export sale transactions are received. If the receipts are not included in income in the same taxable year or if the receipts are attributable to engineering or architectural services or to managerial services, the services income shall be treated as a separate type of income. The amount of profit that the FSC may earn on this separate type of income is to be computed under the rules for computing profit from sales. Grouping of transactions is not allowed with respect to engineering, architectural or managerial services.

Special Rules for Applying Paragraphs (c) and (d) of Section 925

Section 1.925(a)-1T(e)(1)(i) provides that the administrative pricing rules may not be used to create a profit in the FSC if there is a combined loss on a transaction, or group of transactions, of a FSC and its related supplier. However, the FSC is permitted to recover its costs even if to do so creates, or increases, a loss in the related supplier. Paragraph (e)(1)(i) also provides that in applying the gross receipts method for FSC taxable years beginning after December 31, 1986, the FSC profit may not exceed 100% of full costing combined taxable income determined under the full costing combined taxable income method. The limitation reflects Congressional intent that the administrative pricing rules should be applied so as to prevent pricing at a loss to the related supplier.

The DISC special no loss rule of § 1.994-1(e)(1)(ii) for applying the DISC 4% of gross receipts method has not been carried over to FSCs. The special no loss rule, if carried over to FSCs, would be inconsistent with the general no loss rule of § 1.925(a)-1T(e)(1)(i). In addition, the special no loss rule if applied in the FSC context would in certain circumstances produce a FSC

profit that would exceed the limitation of section 925(d) as interpreted under these regulations. That limitation provides that the profit of a FSC determined under the gross receipts method may not exceed two times the profit of the FSC determined under the combined taxable income method. There is no indication in the committee reports that Congress intended that the DISC special no loss rule should override the limitation on the FSC gross receipts method stated in section 925(d).

A special rule at § 1.925(a)-1T(e)(1)(iii) provides that if during a taxable year a FSC recognizes income under the section 482 method while the related supplier recognizes a loss on a sale transaction, the administrative pricing methods may not be used by the FSC and related supplier (or by a FSC in the same controlled group and the same related supplier) on any sale transactions, or group of sale transactions, during that year which fall within the same three digit Standard Industrial Classification as the subject loss sale transaction. This special rule reflects Congressional intent, as stated in Senate Report 98-169, Tax Reform Act of 1984, page 649, that the administrative pricing rules should be applied so as to prevent pricing at a loss to the related supplier.

The DISC regulations provide that the commission due the DISC from the related supplier must be paid within 60 days of the DISC year end. These regulations eliminate that requirement in the FSC context. In place of that requirement, these regulations provide that an account receivable (and payable) will be deemed created under § 1.925(a)-1T(e)(3) as of the due date (including extensions) of the FSC's tax return for any taxable year in which the transfer price, or commission, paid prior to the due date of the FSC's tax return, if any, does not equal the amount determined under section 925. The receivable shall bear interest, from the date it is deemed created, computed under § 1.482-2(a). Payment of the original amount due the related supplier or FSC, whichever is applicable, or of any receivable deemed created, may be in the form of money, property, sales discount or offset accounting entry. Payments by the FSC of dividends and of amounts for services rendered to the FSC may be made by the same means. This provision does not eliminate, however, the requirement that actual cash payments be made by the related supplier to the FSC if the FSC is a commission FSC and if the receipt of payment test of section 924(e)(4) is used to meet the foreign economic process

requirements of section 924(d). The offset accounting entries used under this provision must be clearly identified in both the related supplier's and FSC's books of account, see § 1.925(a)-1T(e)(3).

Sections 1.925(a)-1T(e) (4) and (5) provides that if permitted by the Code or regulations, the Commissioner may redetermine the transfer price, or rental payment, payable by the FSC to the related supplier. Under the same circumstances, the Commissioner may redetermine the commission, or services income, payable by the related supplier to the FSC. Also, a redetermination may be made by the FSC and related supplier if their taxable years are open under the statute of limitations for making claims for refund under section 6511 if they determine that a different transfer pricing method or grouping of transactions would be more beneficial. Likewise, they may redetermine the amount of foreign trading gross receipts and the costs and expenses that are used to determine their profit under the transfer pricing methods. Any redetermination shall affect both the FSC and the related party. The FSC and related supplier may not redetermine that the FSC was operating as a commission FSC rather than a buy-sell FSC, and vice versa.

If a redetermination is made, a receivable will be created, or deemed to be created, in favor of the party that was underpaid on the transaction, or group of transactions, on the original determination. The amount of the receivable will equal the difference between the original determination and the amount determined under the redetermination. The receivable will bear interest, computed under § 1.482-2(a)(2), from the day after the redetermination to the date of payment. In lieu of establishing a receivable, the FSC and related supplier may treat any part of a previous distribution as payment of an amount arising from the redetermination.

Marginal Costing Rules

Section 1.925(b)-1T provides that if a FSC is attempting to establish a foreign market it may use the combined taxable income amount determined under the marginal costing method in applying the combined taxable income transfer pricing method. The FSC will be deemed to be establishing a foreign market if the combined taxable income determined under the marginal costing method is greater than the combined taxable income determined under the full costing method of § 1.925(a)-1T(c) (3)

and (6). The marginal costing rules do not apply to leases or to services.

The combined taxable income determined under the marginal costing method is the lesser of the maximum combined taxable income determined under marginal costing and the overall profit percentage limitation. As under the DISC regulations at § 1.994-2, the maximum combined taxable income under the FSC marginal costing rules is determined by subtracting from the FSC's foreign trading gross receipts (or the related supplier's gross receipts if the FSC is a commission agent) only the related supplier's direct material and direct labor costs. The Internal Revenue Service considered requiring, on a prospective basis, that computation of maximum combined taxable income be made on a true marginal or variable cost basis. On this basis, maximum combined taxable income would have been determined by subtracting from the FSC's foreign trading gross receipts (or the related supplier's gross receipts if the FSC is a commission agent) the related supplier's direct production costs and the related supplier's and FSC's variable general and administrative and selling expenses. Although it is the view of the Internal Revenue Service that this true variable cost basis determination is the correct treatment, the DISC computation method has not been changed.

The overall profit percentage limitation is computed by multiplying the FSC's foreign trading gross receipts (or the related supplier's gross receipts if the FSC is a commission agent) by a fraction the numerator of which is the FSC's and related supplier's combined taxable income on all sales, foreign and domestic, of the export product or product line determined under the full costing method and the denominator of which is the total gross receipts from those sales. In making this computation, the product or product line grouping may vary from the grouping selected for computing the combined taxable income under the full costing method so long as the grouping chosen is as least as broad as that chosen under the full costing method. A product may be included in only one product group even though under the grouping rules it could otherwise be included in more than one group.

The marginal costing method may not be used if there is a combined loss under the marginal costing rules for the transaction or group of transactions. In addition, for FSC taxable years beginning after December 31, 1986, the profit determined under the marginal costing method may be allowed to the

FSC only to the extent it does not exceed the FSC's and related supplier's full costing combined taxable income on the transaction or group of transactions. To allow a profit to the FSC in excess of that amount would create a loss to the related supplier under full costing. This no-loss rule reflects Congressional intent, as stated in Senate Report 98-169, Tax Reform Act of 1984, page 649, that the administrative pricing rules should be applied so as to prevent pricing at a loss to the related supplier.

The effect of the marginal costing no-loss rules and the interrelationship of the overall profit percentage limitation is that the FSC's profit under the marginal costing rules is limited to the lesser of the following:

(1) 23% of maximum combined taxable income determined under the marginal costing rules,

(2) 23% of the overall profit percentage limitation, or

(3) for FSC taxable years beginning after December 31, 1986, 100% of the combined taxable income determined under the full costing method.

Taxpayers are invited to comment on these marginal costing provisions.

Distributions to Shareholders

The regulations at § 1.926(a)-1T(a) provide that distributions from a FSC are included in the shareholder's gross income under section 301. Domestic corporate shareholders of a FSC are entitled to the dividends received deduction under section 245. Section 1.926(a)-1T(a) also provides that, if the FSC shareholder (or if the FSC shareholder is a pass-through entity, the partner or beneficiary of that entity) is a foreign corporation or a nonresident alien individual, the distribution is treated as United States source income that is effectively connected to a United States trade or business.

Because of the difference in treatment of distributions of a FSC to domestic corporate shareholders, § 1.926(a)-1T(b) provides for ordering of distributions. To the extent thereof, distributions are first deemed to be made out of earnings and profits attributable to exempt foreign trade income determined solely because of section 923(a)(4), next out of other exempt foreign trade income, next out of non-exempt foreign trade income determined under the administrative pricing rules, next out of section 923(a)(2) nonexempt income, and finally out of other earnings and profits.

Section 1.926(a)-1T(d) provides that distributions from a FSC out of earnings and profits attributable to foreign trade income, other than section 923(a)(2) non-exempt income, are not treated as dividends for purposes of the personal

holding company (sections 541 through 547) and the foreign personal holding company (sections 551 through 558) provisions. However, the shareholder may elect to treat any amount of the distribution as an item of income under those sections if the shareholder establishes that the amount of the distribution is attributable to earnings and profits of the FSC derived from such an item of income under those sections.

Section 1.926(a)-1T(e) provides that, for purposes of section 1248, a FSC's earnings and profits shall not include earnings and profits attributable to foreign trade income.

Definition of Export Property

Section 1.927(a)-1T provides definitions of export property for purposes of the FSC rules. These definitions parallel in all important respects the definitions of export property of a DISC at § 1.993-3. These regulations at § 1.927(a)-1T(f)(3) provide that export property will include certain standardized computer software on media that are mass-marketed without the right to reproduce for external use. These regulations also provide that:

(1) Petroleum coke is not export property since it is a primary product from oil, see § 1.927(a)-1T(g)(2)(iii);

(2) Medicinal products, insecticides and alcohols may be export property since they are not primary products from oil, see § 1.927(a)-1T(g)(2)(iv);

(3) An orbiting satellite is deemed to be located outside the United States, see § 1.927(a)-1T(d)(4)(vi); and

(4) Fungible export property must be physically segregated from non-export property, see § 1.927(a)-1T(d)(1)(ii).

In order for property to be export property, no more than 50 per cent of the fair market value of that property may be attributable to the fair market value of articles which were imported into the United States. The legislative history of the Tax Reform Act of 1984 (S. Rept. 98-169, pp. 652-653) indicated that the Internal Revenue Service should consider whether to retain the DISC rule which provides that for purposes of computing the foreign content of an article imported into the United States the article is treated as entirely imported even if all or a portion of the article was originally manufactured in the United States and that the foreign content value is the full dutiable value without reduction pursuant to any United States tariff laws. Commentators have suggested that the rule should be changed to provide that foreign content will be only the value added abroad. After review, the DISC rule has been retained with a modification which

provides that if the taxpayer elects, the foreign content will be the fair market value of the imported article reduced by the fair market value at the time of initial export of the portion of the article that was manufactured, produced, grown or extracted in the United States. See § 1.927(a)-1T(e)(4)(i). The taxpayer may make this special election only if the imported article is subjected to manufacturing or production, as defined in § 1.927(a)-1T(c) (1) and (2), within the United States after importation. If the initial export is made to a controlled person within the meaning of section 482, the fair market value at the time of the initial export of the United States component will be established under the rules of section 482 and the regulations under that section. If, however, the initial export is not made to a controlled person, the fair market value must be established by the taxpayer under the facts and circumstances.

A related change made in these regulations at § 1.927(a)-1T(c)(1) is that property which sustains further manufacture, production or processing outside the United States prior to sale or lease by a person but after manufacture, production, extraction or processing in the United States in the United States will be considered as manufactured, produced, grown or extracted in the United States by that person within the meaning of section 927(a)(1)(A), but only if the property is reimported into the United States for further manufacturing, production or processing prior to final export sale. However, in order to obtain FSC benefits on the export of the property manufactured, grown, produced or extracted in the United States, all of the other aspects of the definition of export property in section 927(a) must be satisfied.

Taxpayers are invited to comment on these provisions.

Definition of Gross Receipts

Section 1.927(b)-1T provides definitions of gross receipts. These definitions are taken in all important respects from the definition of gross receipts of a DISC at § 1.993-6. These regulations at § 1.927(b)-1T(c) provide, however, that gross receipts will be determined by reducing the amounts received by returns and allowances. In addition, these regulations provide that in determining the profit of a commission FSC under the administrative pricing methods of section 925(a) (1) and (2), only those receipts of the related supplier which would have been foreign trading gross receipts had they been received by the FSC are taken into account.

Definition of Related Party

These regulations at § 1.927(d)-2T for purposes of the administrative pricing rules of section 925(a) define related party to include a person which is owned or controlled directly or indirectly by the same interests as the FSC within the meaning of section 482 and § 1.482-1(a).

Special Source Rule for Related Supplier

Section 1.927(e)-1T provides that, if the transfer pricing rules of section 925(a) are used to determine the FSC's foreign trade income, the related supplier's foreign source income from the transaction, or group of transactions, shall not exceed the amount of foreign source income that the related supplier would have earned had the analogous DISC transfer pricing rule been used. Under this provision, the DISC 4 percent gross receipts method is analogous to the FSC 1.83 percent gross receipts method, the DISC 50 percent of combined taxable income method is analogous to the FSC 23 percent of combined taxable income method and the section 482 method in the DISC context is analogous to the section 482 method in the FSC context.

Boycott Participation

If a FSC or any member of its controlled group participates in or cooperates with an international boycott within the meaning of section 999, the FSC's exempt foreign trade income will be reduced. The income that is not longer exempt is deemed to be non-exempt foreign trade income.

Nonapplicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to review under Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply and no Regulatory Flexibility Analysis is required for this rule.

Paperwork Reduction Act

These regulations were submitted to the Office of Management and Budget for review under the Paperwork Reduction Act and approved under OMB number 1545-0935.

Drafting Information

The principal author of these regulations is Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects

26 CFR 1.861-1 Through 1.997-1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Source of income, U.S. investments abroad.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

Income Tax Regulations (26 CFR Part 1)

Paragraph 1. The authority for Part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805. * * * Section 1.925(a)-1T also issued under 26 U.S.C. 925(b)(1) and 927(d)(2)(B). Section 1.925(b)-1T also issued under 26 U.S.C. 925(b)(2). * * * Section 1.927(e)-1T also issued under 26 U.S.C. 927(e)(1). Section 1.927(e)-2T also issued under 26 U.S.C. 927(e)(2). * * *

Par. 2. Section 1.921-1T is amended by adding new question and answer 4A to paragraph (a)(4), by adding new question and answer 11A to paragraph (a)(9), and by adding new question and answer 12A to paragraph (a)(10). The added questions and answers read as follows:

§ 1.921-1T Temporary regulations providing transition rules for DISCs and FSCs.

(a) *Termination of a DISC.* * * *

(4) *Commissions for 1984.* * * *

Q-4A: Must commissions which were earned prior to January 1, 1985, be paid by a related supplier if the last date payment is required (as set forth in § 1.994-1(e)(3)) is after December 31, 1984?

A-4A: No.

(9) *Deficiency distributions.* * * *

Q-11A: Must a former DISC remain in existence in order for a former DISC shareholder to take advantage of the

spread provided in section 995(b)(2) with respect to DISC disqualification?

A-11A: No. With respect to distributions deemed to be received by a former DISC shareholder under section 995(b)(2) for taxable years beginning after December 31, 1984, if the former DISC shareholder elects, the rules of section 995(b)(2)(B) shall apply even though the former DISC does not continue in existence. If the former DISC is no longer in existence, the former DISC's shareholders will be deemed to have received the distribution on the last day of their taxable years over the applicable period of time determined under section 995(b)(2) as if the former DISC had remained in existence.

(10) Deemed distribution for 1984.

Q-12A: If under section 805(b)(3) of the Tax Reform Act of 1984 the shareholders of the DISC are permitted to make an election to treat the DISC's 1984 deemed distribution as received over a 10-year period, must the DISC distribute that amount to its shareholders ratably over the 10-year period?

A-12A: No. Under section 805(b)(3) of the Tax Reform Act of 1984, if the DISC's deemed distribution for its taxable year which ended on December 31, 1984, is a qualified distribution, the shareholders of the DISC are permitted to make an election to treat the distribution as received over a 10-year period. The 10-year treatment applies even though the amount of the deemed distribution is distributed to the DISC's shareholders prior to the period in which the distribution is taken into income by the shareholders. In addition, under section 996(e) of the Code, the shareholder's basis in the stock of the DISC will be considered as increased, as of the date of liquidation, by the shareholder's pro rata share of the amount of the undistributed qualified distribution even though that amount is treated as received by the shareholder in later years. Further, the actual distribution in liquidation of the former DISC after 1984 will increase the earnings and profits of a corporate distributee, and the amount actually distributed shall be treated under the rules of section 996.

Par. 3. Section 1.921-1T(b)(1), answer is revised to read as follows:

§ 1.921-1T. Temporary regulations providing transition rules for DISCs and FSCs.

(b) Establishing and electing status as a FSC, small FSC or interest charge DISC—(1) Ninety-day period.

A-1: A corporation electing FSC or small FSC status must file Form 8279. A corporation electing interest charge DISC status must file Form 4876A. A corporation electing to be treated as an FSC, small FSC, or interest charge DISC for its first taxable year shall make its election within 90 days after the beginning of that year. A corporation electing to be treated as an FSC, small FSC, or interest charge DISC for any taxable year other than its first taxable year shall make its election during the 90-day period immediately preceding the first day of that taxable year. The election to be an FSC, small FSC, or interest charge DISC may be made by the corporation, however, during the first 90 days of a taxable year, even if that taxable year is not the corporation's first taxable year, if that taxable year begins before July 1, 1985. Likewise, the election to be an FSC (or a small FSC) may be made during the first 90 days of any taxable year of a corporation if the corporation had in a prior taxable year elected small FSC (or FSC) status and the corporation revokes the small FSC (or FSC) election within the 90 day period. A corporation which was a DISC for its taxable year ending December 31, 1984, which wishes to be treated as an interest charge DISC beginning with its first taxable year beginning after December 31, 1984, may make the election to be treated as an interest charge DISC by filing Form 4876A on or before July 1, 1987. Also, if a corporation which has elected FSC, small FSC or interest charge DISC status, or a shareholder of that corporation, is acquired in a qualified stock purchase under section 338(d)(3), and if an election under section 338(a) is effective with regard to that corporation, the corporation may re-elect FSC, small FSC or interest charge DISC status, (whichever is applicable,) not later than the date of the election under section 338(a), see section 338(g)(i) and § 1.338-1T(c). This re-election is necessary because the original elections are deemed terminated if an election is made under section 338(a). The rules contained in § 1.992-2 (a)(1), (b)(1) and (b)(3) shall apply to the manner of making the election and the manner and form of shareholder consent.

Par. 4. Section 1.921-1T(b)(12), Answer 12, is amended by adding a new sentence immediately after the existing sentence of Answer 12 as follows:

§ 1.921-1T. Temporary regulations providing transition rules for DISCs and FSCs.

(b) Establishing and electing status as a FSC, small FSC or interest charge DISC.

(12) Pre-effective date costs and activities.

A-12: *** Costs incurred and activities performed by a related supplier prior to January 1, 1985 (or prior to the effective date of a corporation's election to be treated as a FSC if other than January 1, 1985) with respect to transactions occurring after January 1, 1985 (or after the effective date of a corporation's election to be treated as a FSC) need not be taken into account for purposes of computing the FSC's profit under section 925 but are treated for section 925(c) purposes as if they were performed on behalf of the FSC.

§§ 1.925(b)-1T and 1.925(c)-1T [Removed]

Par. 5. Sections 1.925(b)-1T and 1.925(c)-1T are removed and new §§ 1.921-3T, 1.923-1T, 1.924(a)-1T, 1.925(a)-1T, 1.925(b)-1T, 1.926(a)-1T, 1.927(a)-1T, 1.927(b)-1T, 1.927(e)-1T, and 1.927(e)-2T are added in the appropriate places to read as follows:

§ 1.921-3T. Temporary Regulations; Foreign sales corporation general rules.

(a) Exclusion—(1) Classifications of income. The extent to which income of a FSC (any further reference to a FSC in this section shall include a small FSC unless indicated otherwise) is subject to the corporate income tax of section 11, or, in the alternative, section 1201(a), is dependent upon the allocation of the FSC's income to the following five categories:

- (i) Exempt foreign trade income determined under section 923 and § 1.923-1T;
 - (ii) Non-exempt foreign trade income determined with regard to the administrative pricing rules of section 925(a) (1) or (2);
 - (iii) Non-exempt foreign trade income determined without regard to the administrative pricing rules of section 925(a) (1) or (2) (section 923(a)(2) non-exempt income as defined in section 927(d)(6));
 - (iv) Investment income and carrying charges; and
 - (v) Other non-foreign trade income.
- (2) Source and characterization of FSC income—(i) Exempt foreign trade income.** The exempt foreign trade income of a FSC determined under section 923 and § 1.923-1T is treated as foreign source income which is not effectively connected with a United States trade or business. See § 1.923-1T(a) for the definition of foreign trade income and § 1.923-1T(b) for the

definition of exempt foreign trade income.

(ii) *Non-exempt foreign trade income determined with regard to the administrative pricing rules.* The FSC's non-exempt foreign trade income with respect to a transaction or group of transactions will be treated as United States source income which is effectively connected with the FSC's trade or business which is conducted through its permanent establishment within the United States if either of the administrative pricing rules of section 925(a) (1) or (2) is used to determine the FSC's foreign trade income from a transaction or group of transactions. See § 1.923-1T(b) for the definition of non-exempt foreign trade income.

(iii) *Non-exempt foreign trade income determined without regard to the administrative pricing rules.* The source and taxation of the FSC's non-exempt foreign trade income not classified in paragraph (a)(2)(ii) of this section will be determined under the appropriate sections of the Internal Revenue Code and the regulations under those sections. This type of income (section 923(a)(2) non-exempt income) includes both income that is not effectively connected with the conduct of a trade or business in the United States and income that is effectively connected.

(iv) *Investment income and carrying charges.* All of the FSC's investment income and carrying charges will be treated as income which is effectively connected with the FSC's trade or business which is conducted through its permanent establishment within the United States. The source of that income will be determined under the appropriate sections of the Internal Revenue Code and the regulations under those sections. See § 1.921-2(f) (Q & A9) for definition of investment income and carrying charges.

(v) *Non-foreign trade income (other than investment income and carrying charges).* The source and taxation of the FSC's non-foreign trade income (other than investment income and carrying charges) will be determined under the appropriate sections of the Internal Revenue Code and the regulations under those sections.

(b) *Allocation and apportionment of deductions.* Expenses, losses and deductions incurred by the FSC shall be allocated and apportioned under the rules set forth in § 1.861-8 to the FSC's foreign trade income and to the FSC's non-foreign trade income. Any deductions incurred by the FSC on a transaction, or group of transactions, which are allocated and apportioned to the FSC's foreign trade income from that transaction, or group of transactions,

shall be allocated on a proportionate basis between exempt foreign trade income and non-exempt foreign trade income.

(c) *Net operating losses and capital losses—* (1) *General rule.* (i) If an FSC for any taxable year incurs a deficit in earnings and profits attributable to foreign trade income determined without regard to the administrative pricing rules of section 925(a) (1) or (2), that deficit shall be applied to reduce current earnings and profits, if any, attributable to—

(A) First, exempt foreign trade income determined with regard to the administrative pricing rules,

(B) Second, non-exempt foreign trade income determined with regard to the administrative pricing rules,

(C) Third, investment income and carrying charges, and

(D) Fourth, other non-foreign trade income.

(ii) If an FSC for any taxable year incurs a deficit in earnings and profits attributable to non-foreign trade income (other than investment income, carrying charges and net capital losses), that deficit shall be applied to reduce current earnings and profits, if any, attributable to—

(A) First, investment income and carrying charges,

(B) Second, exempt foreign trade income determined with regard to the administrative pricing rules,

(C) Third, exempt foreign trade income determined without regard to the administrative pricing rules,

(D) Fourth, non-exempt foreign trade income determined with regard to the administrative pricing rules, and

(E) Fifth, section 923(a)(2) non-exempt income.

(iii) If an FSC for any taxable year incurs a deficit in earnings and profits attributable to investment income and carrying charges, that deficit shall be applied to reduce current earnings and profits, if any, attributable to—

(A) First, non-foreign trade income other than capital gains,

(B) Second, exempt foreign trade income determined with regard to the administrative pricing rules,

(C) Third, exempt foreign trade income determined without regard to the administrative pricing rules,

(D) Fourth, non-exempt foreign trade income determined with regard to the administrative pricing rules, and

(E) Fifth, section 923(a)(2) non-exempt income.

(iv) Net capital losses will be available for carryback or carryover pursuant to paragraph (c)(2) of this section.

(v) Because the no-loss rules provide that a related supplier may always compensate the FSC for its expenses either as part of the commission payment or as part of the transfer price if the administrative pricing rules are used (see § 1.925(a)-1T(e)(1)(i)), an FSC will not have a deficit in its earnings and profits relating to foreign trade income determined with regard to the administrative pricing rules. To determine the amount of any division of earnings and profits for the purpose of determining under § 1.926(a)-1T (a) and (b) the treatment and order of distributions, the portion of a deficit in earnings and profits chargeable under this paragraph to such division prior to such distribution shall be determined in a manner consistent with the rules in § 1.316-2(b) for determining the amount of earnings and profits available on the date of any distribution.

(2) *Carryback or carryover of net operating losses and capital losses to other taxable years of an FSC (or former FSC).* (i) The amount of the deduction for the taxable year under section 172 for a net operating loss carryback or carryover, or under section 1212 for a capital loss carryback or carryover, shall be determined in the same manner as if the FSC were a foreign corporation which had not elected to be treated as an FSC. Thus, the amount of the deduction will be the same whether or not the corporation was an FSC in the year of the loss or in the year to which the loss is carried.

(ii) Any carryback or carryover of an FSC's (or former FSC's) net operating loss which is attributable to transactions which give rise to foreign trade income shall be charged—

(A) First, to earnings and profits attributable to exempt foreign trade income which is determined without regard to the administrative pricing rules,

(B) Second, to earnings and profits attributable to section 923(a)(2) non-exempt income,

(C) Third, to earnings and profits attributable to exempt foreign trade income determined with regard to the administrative pricing rules,

(D) Fourth, to earnings and profits attributable to non-exempt foreign trade income determined with regard to the administrative pricing rules,

(E) Fifth, to earnings and profits attributable to investment income and carrying charges (other than capital gain income), and

(F) Sixth, to earnings and profits attributable to non-foreign trade income (other than investment income, carrying charges and capital gain income).

(iii) Any carryback or carryover of an FSC's (or former FSC's) net operating loss which is attributable to non-foreign trade income (other than capital gain income) shall be charged—

(A) First, to earnings and profits attributable to non-foreign trade income (other than investment income, carrying charges and capital gain income).

(B) Second, to earnings and profits attributable to investment income and carrying charges.

(C) Third, to earnings and profits attributable to exempt foreign trade income determined with regard to the administrative pricing rules.

(D) Fourth, to earnings and profits attributable to non-exempt foreign trade income determined with regard to the administrative pricing rules.

(E) Fifth, to earnings and profits attributable to exempt foreign trade income which is determined without regard to the administrative pricing rules, and

(F) Sixth, to earnings and profits attributable to section 923(a)(2) non-exempt income.

(iv) Any carryback or carryover of a net operating loss to a year in which the corporation was (or is) an FSC from a taxable year in which the corporation was not an FSC shall be applied in a manner consistent with subdivision (iii) of this paragraph.

(d) *Credits against tax*—(1) *General rule.* Notwithstanding any other provision of chapter 1, subtitle A, an FSC is allowed under section 921(c) as credits against tax only the following credits:

(i) The foreign tax credit, section 27(a);

(ii) The credit for tax withheld at source on foreign corporations, section 33; and

(iii) The certain uses of gasoline and special fuels credit, section 34.

(2) *Foreign tax credit.* (i) The direct foreign tax credit of section 901(b)(4) as determined under section 906 for income, war profits, and excess profits taxes (or taxes in lieu thereof) paid or accrued to any foreign country or possession of the United States is allowed an FSC only to the extent that those taxes are attributable to the FSC's foreign source non-foreign trade income which is effectively connected with its conduct of a trade or business within the United States. See section 906(b)(5).

(ii) The foreign tax credit for domestic corporate shareholders in foreign corporations (the deemed paid credit) provided under section 901(a) as determined under section 902 is allowed for income, war profits, and excess profits taxes deemed paid or accrued by an FSC (or former FSC) only to the

extent those taxes are deemed paid or accrued with respect to the FSC's (or former FSC's) section 923(a)(2) non-exempt income and its non-foreign trade income.

(iii) The foreign tax credit allowed by sections 901 and 903 for tax withheld at source is allowed only to the extent the dividends paid to the FSC's (or former FSC's) shareholder are attributable to the FSC's (or former FSC's) section 923(a)(2) non-exempt income and its non-foreign trade income.

(3) *Foreign tax credit limitation.* (i) For purposes of computation of the direct foreign tax credit of section 901(b)(4) as determined under section 906, the separate limitation of section 904(d)(1)(C) for the FSC's taxable income attributable to its foreign trade income will apply. The direct foreign tax credit is not allowed to an FSC with regard to taxes it paid which are attributable to its foreign trade income. Since the foreign tax credit is not allowed for that type of income, the effect of the separate limitation is to remove the FSC's foreign trade income from the numerator of the fraction used to compute the FSC's overall foreign tax credit limitation.

(ii) A separate limitation under section 904(d)(1)(D) is provided for distributions from an FSC (or former FSC) that arise through operation of the deemed paid credit of section 902 and are attributable to foreign trade income earned during the period when the distributing corporation was an FSC. This limitation is computed by multiplying the FSC's shareholder's tentative United States tax by a fraction the numerator of which is the foreign source dividend (determined with regard to section 78) attributable to the foreign trade income less dividends received deductions and other expenses allocated and apportioned under § 1.861-8 allowed to the shareholder and the denominator of which is the shareholder's worldwide income. The effect of this separate limitation is to remove dividends attributable to the FSC's foreign trade income from the numerator of the fraction used to compute the overall foreign tax credit limitation of the FSC's shareholder.

(iii) The separate limitation under section 904(d)(1)(D) also applies to the foreign tax credit allowed to an FSC shareholder by sections 901 and 903 for tax withheld at source on dividends paid by the FSC. The numerator of this fraction is the part of the dividend attributable to the FSC's foreign trade income and the denominator is the shareholder's worldwide income. The effect of this separate limitation is to remove dividends attributable to foreign

trade income of an FSC (or former FSC) from the numerator of the fraction used to compute the overall foreign tax credit limitation of the FSC's shareholder.

(e) *Deduction for foreign income, war profits and excess profits taxes.* Under section 275(a)(4)(B), income, war profits and excess profits taxes imposed by a foreign country or possession of the United States may not be deducted by an FSC to the extent those taxes are paid or accrued with respect to its foreign trade income.

(f) *Payment of estimated tax.* Every FSC which is subject to tax under section 11 or 1201(a) and section 882 must make payment of its estimated tax in accordance with section 6154 and the regulations under that section. In determining the amount of the estimated tax, the FSC must treat the tax imposed by section 881 as though it were a tax imposed by section 11. See section 6154(g).

(g) *Accumulated earnings, personal holding company and foreign personal holding company.* The provisions covering the accumulated earnings tax (sections 531 through 537), personal holding companies (sections 541 through 547) and foreign personal holding companies (sections 551 through 558) apply to FSCs to the extent they would apply to foreign corporations that are not FSCs.

(h) *Subpart F income and increase of earnings invested in U.S. property.* For the mandatory inclusion in the gross income of the U.S. shareholders of the Subpart F income and of the increase in earnings invested in U.S. property of an FSC, see sections 951 through 964 and the regulations under those sections. However, the foreign trade income (other than section 923(a)(2) non-exempt income) and, generally, the investment income and carrying charges of an FSC and any deductions which are allocated and apportioned to those classes of income, are not taken into account under sections 951 through 964. See sections 951(e) and 952(b).

(i) *Certain accumulations of earnings and profits.* For the inclusion in the gross income of U.S. persons as a dividend on the gain recognized on certain sales or exchanges of stock in an FSC, to the extent of certain earnings and profits attributable to the stock which were accumulated while the FSC was a controlled foreign corporation, see section 1248 and the regulations under that section. However, section 1248 and the regulations under that section do not apply to an FSC's earnings and profits attributable to foreign trade income, see section 1248(d)(6).

(j) *Limitations on certain multiple tax benefits.* The provisions of section 1561, Limitations on Certain Multiple Tax Benefits in the Case of Certain Controlled Corporations, and section 1563, Definitions and Special Rules, and the regulations under those sections apply to an FSC and its controlled group.

§ 1.923-1T. Temporary Regulations; Exempt foreign trade income.

(a) *Foreign trade income.* Foreign trade income of a FSC is the FSC's gross income attributable to its foreign trading gross receipts. (Any further reference to a FSC in this section shall include a small FSC unless indicated otherwise.) If the FSC is the principal on the sale of export property which it purchased from a related supplier, the FSC's gross income is determined by subtracting from its foreign trading gross receipts the transfer price determined under the transfer pricing methods of section 925(a). If the FSC is the commission agent on the sale of export property by its related supplier, the FSC's gross income is the commission paid or payable by the related supplier to the FSC with respect to the transactions that would have generated foreign trading gross receipts had the FSC been the principal on the transaction. See § 1.925(a)-1T(f) *Examples (1) and (6)* for illustrations of the computation of a FSC's foreign trade income, exempt foreign trade income and taxable income.

(b) *Exempt foreign trade income—(1) Determination.* (i) If a FSC uses either of the two administrative pricing rules, provided for by sections 925(a) (1) and (2), to determine its income from a transaction, or group of transactions, to which section 925 applies (see § 1.925(a)-1T(b)(2) (ii) and (iii)), 15/23 of the foreign trade income that it earns from the transaction, or group of transactions, will be exempt foreign trade income. If a FSC has a non-corporate shareholder (shareholders), 16/23 of its foreign trade income attributable to the noncorporate shareholder's (shareholders') proportionate interest in the FSC will be exempt foreign trade income. See section 291(a)(4).

(ii) If a FSC does not use the administrative pricing rules to determine its income from a transaction, or group of transactions, which gives rise to foreign trade income, 30 percent of its foreign trade income will be exempt foreign trade income. If a FSC has a non-corporate shareholder (shareholders), 32 percent of its foreign trade income attributable to the non-corporate shareholder's (shareholders')

proportionate interest in the FSC will be exempt foreign trade income. See section 291(a)(4).

(iii) Exempt foreign trade income so determined under subdivisions (1) (i) and (ii) of this paragraph is treated as foreign source income which is not effectively connected with the conduct of a trade or business within the United States. See section 921(a).

(2) *Special rule for foreign trade income allocable to a qualified cooperative.* (i) Pursuant to section 923(a)(4), if a qualified cooperative is a shareholder of a FSC, the FSC's non-exempt foreign trade income determined by use of either of the administrative pricing methods of section 925(a) (1) or (2) which is allocable to the marketing of agricultural or horticultural products, or the providing of related services, for any taxable year will be treated as exempt foreign trade income to the extent that it is distributed to the qualified cooperative shareholder. A qualified cooperative is defined as any organization to which chapter 1, subchapter T, part 1 of the Code applies. See section 1381(a).

(ii) This special rule of section 923(a)(4) shall apply only if the distribution is made before the due date under section 6072(b), including extensions, for filing the FSC's income tax return for that year. Any distribution which satisfies this requirement will be treated as made on the last day of the FSC's taxable year. In addition, this special rule shall apply only if the income of the cooperative is based on arm's length transactions between the cooperative and its members or patrons.

(iii) Income attributable to the marketing of agricultural or horticultural products, or the providing of related services, shall be allocated to the FSC shareholders on a per share basis. See § 1.926(a)-1T(b) for ordering rules for distributions from a FSC.

(3) *Special rule for military property.* (i) Under section 923(a)(5), the exempt foreign trade income of an FSC relating to the disposition of, or services relating to, military property shall be equal to 50 percent of the amount which, but for section 923(a)(5), would be treated as exempt foreign trade income under section 923(a) (2) or (3). The foreign trade income no longer treated as exempt because of this special rule of section 923(a)(5) will remain income of the FSC and will be treated as non-exempt foreign trade income.

(ii) The term "military property" is defined in section 995(b)(3)(B) and includes any property which is an arm, ammunition, or implement of war designated in the munitions list

published pursuant to section 38 of the International Security Assistance and Arms Export Control Act of 1976 (22 U.S.C. 2778) (which repealed and replaced the Military Security Act of 1954).

§ 1.924(a)-1T. Temporary regulations; definition of foreign trading gross receipts.

(a) *In general.* The term "foreign trading gross receipts" means any of the five amounts described in paragraphs (b) through (f) of this section, except to the extent that any of the five amounts is an excluded receipt within the meaning of paragraph (g) of this section. These amounts will not be foreign trading gross receipts if the FSC is not managed outside the United States, pursuant to section 924(c), or if the economic processes with regard to a transaction, or group of transactions, that are required of an FSC by section 924(d) do not take place outside the United States. The requirement that these activities take place outside the United States does not apply to a small FSC. The activities required by sections 924 (c) and (d) may be performed either by the FSC or by any person (whether or not related to the FSC) acting under contract with the FSC for the performance of the required activities. Sections 1.924(c)-1 and 1.924(d)-1 provide rules to determine whether these requirements have been met. For purposes of this section—

(1) *FSC.* All references to a FSC in this section mean a FSC, except when the context indicates that such term means a corporation in the process of meeting the conditions necessary for that corporation to become an FSC. All references to a FSC in this section shall include a small FSC unless indicated otherwise.

(2) *Sale and lease.* The term "sale" includes an exchange or other disposition and the term "lease" includes a rental or a sublease. The term "license" includes a sublicense. All rules under this section applicable to leases of export property apply in the same manner to licenses of export property. See § 1.927(a)-1T(f)(3) for a description of intangible property which cannot be export property.

(3) *Gross receipts.* The term "gross receipts" is defined by section 927(b) and § 1.927(b)-1T.

(4) *Export property.* The term "export property" is defined by section 927(a) and § 1.927(a)-1T.

(5) *Controlled group.* The term "controlled group" is defined by paragraph (h) of this section.

(6) *Related supplier and related party.* The terms related supplier and related party are defined by § 1.927(d)-2T.

(b) *Sales of export property.* Foreign trading gross receipts of a FSC include gross receipts from the sale of export property by the FSC, or by any principal for whom the FSC acts as a commission agent (whether or not the principal is a related supplier), pursuant to the terms of a contract entered into with a purchaser by the FSC or by the principal at any time or by any other person and assigned to the FSC or the principal at any time prior to the shipment of the property to the purchaser. Any agreement, oral or written, which constitutes a contract at law, satisfies the contractual requirements of this paragraph. Gross receipts from the sale of export property, whenever received, do not constitute foreign trading gross receipts unless the seller (or the corporation acting as commission agent for the seller) is an FSC at the time of the shipment of the property to the purchaser. For example, if a corporation which sells export property under the installment method is not an FSC for the taxable year in which the property is shipped to the purchaser, gross receipts from the sale do not constitute foreign trading gross receipts for any taxable year of the corporation.

(c) *Leases of export property.*—(1) *In general.* Foreign trading gross receipts of an FSC include gross receipts from the lease of export property provided that—

(i) The property is held by the FSC (or by a principal for whom the FSC acts as commission agent with respect to the lease) either as an owner or lessee at the beginning of the term of the lease, and

(ii) The FSC qualified (or was treated) as a FSC for its taxable year in which the term of the lease began.

(2) *Prepayment of lease receipts.* If the gross receipts from a lease of export property are prepaid, then—

(i) All the prepaid gross receipts are foreign trading gross receipts of an FSC if it is reasonably expected at the time of the prepayment that, throughout the term of the lease, the lease will meet the requirements of this paragraph and the property will be export property; or

(ii) If it is reasonably expected at the time of the prepayment that the prepaid receipts would not be foreign trading gross receipts throughout the term of the lease if those receipts were not received as a prepayment, then only those prepaid receipts, for the taxable years of the FSC for which they would be foreign trading gross receipts, are foreign trading gross receipts. Thus, for example, if a lessee makes a prepayment of the first and last years'

rent, and it is reasonably expected that the leased property will be export property for the first half of the lease period but not the second half of such period, the amount of the prepayment which represents the first year's rent will be considered foreign trading gross receipts if it would otherwise qualify, whereas the amount of the prepayment which represents the last year's rent will not be considered foreign trading gross receipts.

(d) *Related and subsidiary services.*—

(1) *In general.* Foreign trading gross receipts of an FSC include gross receipts from services furnished by the FSC which are related and subsidiary to any sale or lease (as described in paragraph (b) or (c) of this section) of export property by the FSC or with respect to which the FSC acts as a commission agent, provided that the FSC derives foreign trading gross receipts from the sale or lease. The services may be performed within or without the United States.

(2) *Services furnished by the FSC.* Services are considered to be furnished by an FSC for purposes of this paragraph if the services are provided by—

(i) The person who sold or leased the export property to which the services are related and subsidiary, provided that the FSC acts as a commission agent with respect to the sale or lease of the property and with respect to the services,

(ii) The FSC as principal, or any other person pursuant to a contract with the FSC, provided the FSC acted as principal or commission agent with respect to the sale or lease of the property, or

(iii) A member of the same controlled group as the FSC if the sale or lease of the export property is made by another member of the controlled group provided, however, that the FSC acts as principal or commission agent with respect to the sale or lease and as commission agent with respect to the services.

(3) *Related services.* Services which may be related to a sale or lease of export property include but are not limited to warranty service, maintenance service, repair service, and installation service. Transportation (including insurance related to such transportation) will be related to a sale or lease of export property, if the cost of the transportation is included in the sale price or rental of the property or, if the cost is separately stated, is paid by the FSC (or its principal) which sold or leased the property to the person furnishing the transportation service. Financing or the obtaining of financing

for a sale or lease is not a related service for purposes of this paragraph. A service is related to a sale or lease of export property if—

(i) The service is of the type customarily and usually furnished with the type of transaction in the trade or business in which the sale or lease arose, and

(ii) The contract to furnish the service—

(A) Is expressly provided for in or is provided for by implied warranty under the contract of sale or lease,

(B) Is entered into on or before the date which is 2 years after the date on which the contract under which the sale or lease was entered into, provided that the person described in paragraph (d)(2) of this section which is to furnish the service delivers to the purchaser or lessor a written offer or option to furnish the services on or before the date on which the first shipment of goods with respect to which the service is to be performed is delivered, or

(C) Is a renewal of the services contract described in subdivisions (ii) (A) and (B) of this paragraph.

(4) *Subsidiary services.*—(i) *In general.* Services related to a sale or lease of export property are subsidiary to the sale or lease only if it is reasonably expected at the time of the sale or lease that the gross receipts from all related services furnished by the FSC (as defined in this paragraph (d)(2)) will not exceed 50 percent of the sum of the gross receipts from the sale or lease and the gross receipts from related services furnished by the FSC (as described in this paragraph (d)(2)). In the case of a sale, reasonable expectations at the time of the sale are based on the gross receipts from all related services which may reasonably be performed at any time before the end of the 10-year period following the date of the sale. In the case of a lease, reasonable expectations at the time of the lease are based on the gross receipts from all related services which may reasonably be performed at any time before the end of the term of the lease (determined without regard to renewal options).

(ii) *Allocation of gross receipts from services.* In determining whether the services related to a sale or lease of export property are subsidiary to the sale or lease, the gross receipts to be treated as derived from the furnishing of services may not be less than the amount of gross receipts reasonably allocated to the services as determined under the facts and circumstances of each case without regard to whether—

(A) The services are furnished under a separate contract or under the same

contract pursuant to which the sale or lease occurs, or

(B) The cost of the services is specified in the contract of sale or lease.

(iii) *Transactions involving more than one item of export property.* If more than one item of export property is sold or leased in a single transaction pursuant to one contract, the total gross receipts from the transaction and the total gross receipts from all services related to the transaction are each taken into account in determining whether the services are subsidiary to the transaction. However, the provisions of this subdivision apply only if the items could be included in the same product line, as determined under § 1.925(a)-1T(c)(8).

(iv) *Renewed service contracts.* If under the terms of a contract for related services, the contract is renewable within 10 years after a sale of export property, or during the term of a lease of export property, related services to be performed under the renewed contract are subsidiary to the sale or lease if it is reasonably expected at the time of the renewal that the gross receipts from all related services which have been and which are to be furnished by the FSC (as described in paragraph (d)(2) of this section) will not exceed 50 percent of the sum of the gross receipts from the sale or lease and the gross receipts from related services furnished by the FSC (as so described). Reasonable expectations are determined as provided in subdivision (i) of this paragraph.

(v) *Parts used in services.* If a services contract described in paragraph (d)(3) of this section provides for the furnishing of parts in connection with the furnishing of related services, gross receipts from the furnishing of the parts are not taken into account in determining whether under this paragraph (d)(4) the services are subsidiary. See paragraph (b) or (c) of this section to determine whether the gross receipts from the furnishing of parts constitute foreign trading gross receipts. See § 1.927(a)-1T(c)(2) and (e)(3) for rules regarding the treatment of the parts with respect to the manufacture of export property and the foreign content of the property, respectively.

(5) *Relation to leases.* If the gross receipts for services which are related and subsidiary to a lease of property have been prepaid at any time for all the services which are to be performed before the end of the term of the lease, then the rules in paragraph (c)(2) of this section (relating to prepayment of lease receipts) will determine whether prepaid services under this paragraph (d)(5) are foreign trading gross receipts. Thus, for

example, if it is reasonably expected that leased property will be export property for the first year of the term of the lease but will not be export property for the second year of the term, prepaid gross receipts for related and subsidiary services to be furnished in the first year may be foreign trading gross receipts. However, any prepaid gross receipts for the services to be furnished in the second year cannot be foreign trading gross receipts.

(6) *Relation with export property determination.* The determination as to whether gross receipts from the sale or lease of export property constitute foreign trading gross receipts does not depend upon whether services connected with the sale or lease are related and subsidiary to the sale or lease. Thus, for example, assume that an FSC receives gross receipts of \$1,000 from the sale of export property and gross receipts of \$1,100 from installation and maintenance services which are to be furnished by the FSC within 10 years after the sale and which are related to the sale. The \$1,100 which the FSC receives for the services would not be foreign trading gross receipts since the gross receipts from the services exceed 50 percent of the sum of the gross receipts from the sale and the gross receipts from the related services furnished by the FSC. The \$1,000 which the FSC receives from the sale of export property would, however, be foreign trading gross receipts if the sale met the requirements of paragraph (b) of this section.

(e) *Engineering and architectural services—* (1) *In general.* Foreign trading gross receipts of an FSC include gross receipts from engineering services (as described in paragraph (e)(5) of this section) or architectural services (as described in paragraph (e)(6) of this section) furnished by such FSC (as described in paragraph (e)(7) of this section) for a construction project (as defined in paragraph (e)(8) of this section) located, or proposed for location, outside the United States. Such services may be performed within or without the United States.

(2) *Services included.* Engineering and architectural services include feasibility studies for a proposed construction project whether or not such project is ultimately initiated.

(3) *Excluded services.* Engineering and architectural services do not include—

(i) Services connected with the exploration for oil or gas, or

(ii) Technical assistance or know-how. For purposes of this paragraph, the term "technical assistance or know-how" includes activities or programs

designed to enable business, commerce, industrial establishments, and governmental organizations to acquire or use scientific, architectural, or engineering information.

(4) *Other services.* Receipts from the performance of construction activities other than engineering and architectural services constitute foreign trading gross receipts to the extent that the activities are related and subsidiary services (within the meaning of paragraph (d) of this section) with respect to a sale or lease of export property.

(5) *Engineering services.* For purposes of this paragraph, engineering services in connection with any construction project (within the meaning of paragraph (e)(8) of this section) include any professional services requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, or engineering sciences to those professional services as consultation, investigation, evaluation, planning, design, or responsible supervision of construction for the purpose of assuring compliance with plans, specifications, and design.

(6) *Architectural services.* For purposes of this paragraph, architectural services include the offering or furnishing of any professional services such as consultation, planning, aesthetic and structural design, drawings and specifications, or responsible supervision of construction (for the purpose of assuring compliance with plans, specifications, and design) or erection, in connection with any construction project (within the meaning of paragraph (e)(8) of this section).

(7) *Definition of "furnished by the FSC".* For purposes of this paragraph, the term "furnished by the FSC" means architectural and engineering services furnished:

(i) By the FSC,

(ii) By another person (whether or not that person is a United States person) pursuant to a contract entered into with the FSC at any time prior to the furnishing of the services, provided that the FSC acts as principal, or

(iii) By another person (whether or not that person is a United States person) pursuant to a contract for the furnishing of the services entered into by, or assigned to, the person at any time, provided that the FSC acts as a commission agent for the furnishing of the services.

(8) *Definition of "construction project".* For purposes of this paragraph, the term "construction project" includes the erection, expansion, or repair (but not including minor remodeling or minor

repairs) of new or existing buildings or other physical facilities including, for example, roads, dams, canals, bridges, tunnels, railroad tracks, and pipelines. The term also includes site grading and improvement and installation of equipment necessary for the construction. Gross receipts from the sale or lease of construction equipment are not foreign trading gross receipts unless the equipment is export property.

(f) *Managerial services*—(1) *In general.* Foreign trading gross receipts of a first FSC for its taxable year include gross receipts from the furnishing of managerial services provided for an unrelated FSC or unrelated interest charge DISC to aid the unrelated FSC or unrelated interest charge DISC in deriving foreign trading gross receipts or qualified export receipts, as the case may be, provided that at least 50 percent of the first FSC's gross receipts for such year consists of foreign trading gross receipts derived from the sale or lease of export property and the furnishing of related and subsidiary services. For purposes of this paragraph, managerial services are considered furnished by an FSC if the services are provided—

- (i) By the first FSC,
- (ii) By another person (whether or not a United States person) pursuant to a contract entered into by that person with the first FSC at any time prior to the furnishing of the services, provided that the first FSC acts as principal with respect to the furnishing of the services, or
- (iii) By another person (whether or not a United States person) pursuant to a contract for the furnishing of services entered into at any time prior to the furnishing of the services provided that the first FSC acts as commission agent with respect to those services.

(2) *Definition of "managerial services".* The term "managerial services" as used in this paragraph means activities relating to the operation of an unrelated FSC or an unrelated interest charge DISC which derives foreign trading gross receipts or qualified export receipts as the case may be from the sale or lease of export property and from the furnishing of services related and subsidiary to those sales or leases. The term includes staffing and operational services necessary to operate the unrelated FSC or unrelated interest charge DISC, but does not include legal, accounting, scientific, or technical services.

Examples of managerial services are: conducting export market studies, making shipping arrangements, and contacting potential foreign purchasers.

(3) *Status of recipient of managerial services.* Foreign trading gross receipts

of a first FSC include receipts from the furnishing of managerial services during any taxable year of a recipient of such services if the recipient qualifies as an FSC or interest charge DISC for the taxable year. For purposes of this paragraph, a recipient is deemed to qualify as an FSC or interest charge DISC for its taxable year if the first FSC obtains from the recipient a copy of the recipient's election to be treated as an FSC or interest charge DISC together with the recipient's sworn statement that an election has been timely filed with the Internal Revenue Service Center. The recipient may mark out the names of its shareholders on a copy of its election to be treated as an FSC or interest charge DISC before submitting it to the first FSC. The copy of the election and the sworn statement of the recipient must be received by the first FSC within six months after the first FSC furnishes managerial services for the recipient. The copy of the election and the sworn statement of the recipient need not be obtained by the first FSC for subsequent taxable years of the recipient. A recipient of managerial services is not treated as an FSC or interest charge DISC with respect to the services performed during a taxable year for which the recipient does not qualify as an FSC or interest charge DISC if the first FSC performing such services does not believe or if a reasonable person would not believe (taking into account the furnishing FSC's managerial relationship with such recipient FSC or interest charge DISC) at the beginning of such taxable year that the recipient will qualify as an FSC or an interest charge DISC for such taxable year.

(g) *Excluded receipts*—(1) *In general.* Notwithstanding the provisions of paragraphs (b) through (f) of this section, foreign trading gross receipts of an FSC do not include any of the six amounts described in paragraphs (g) (2) through (7) of this section.

(2) *Sales and leases of property for ultimate use in the United States.* Property which is sold or leased for ultimate use in the United States does not constitute export property. See § 1.927(a)-1T(d)(4) relating to determination of where the ultimate use of the property occurs. Thus, foreign trading gross receipts of an FSC described in paragraph (b) or (c) of this section do not include gross receipts of the FSC from the sale or lease of this property.

(3) *Sales or leases of export property and furnishing of services accomplished by subsidy.* Foreign trading gross receipts of an FSC do not include gross receipts described in paragraphs (b) through (f) of this section if the sale or

lease of export property or the furnishing of services is accomplished by a subsidy granted by the United States or any instrumentality thereof, see section 924(f)(1)(B). Subsidies covered by section 924(f)(1)(B) are listed in subdivisions (i) through (vi) of this paragraph.

(i) The development loan program, or grants under the technical cooperation and development grants program of the Agency for International Development, or grants under the military assistance program administered by the Department of Defense, pursuant to the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151) unless the FSC shows to the satisfaction of the Commissioner that, under the conditions existing at the time of the sale (or at the time of lease or at the time the services were rendered), the purchaser (or lessor or recipient of the services) had a reasonable opportunity to purchase (or lease or contract for services) on competitive terms and from a seller (or lessor or performer of services) who was not a U.S. person, goods (or services) which were substantially identical to such property (or services) and which were not manufactured, produced, grown, or extracted in the United States (or performed by a U.S. person);

(ii) The Pub. L. 480 program authorized under Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1691, 1701-1714);

(iii) The Export Payment program of the Commodity Credit Corporation authorized by sections 5 (d) and (f) of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714c (d) and (f));

(iv) The section 32 export payment programs authorized by section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c);

(v) The Export Sales program of Commodity Credit Corporation authorized by sections 5 (d) and (f) of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714c (d) and (f)), other than the GSM-4 program provided under 7 CFR Part 1488, and section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427), for the purpose of disposing of surplus agricultural commodities and exporting or causing to be exported agricultural commodities; and

(vi) The Foreign Military Sales direct credit program (22 U.S.C. 2763) or the Foreign Military Sales loan guaranty program (22 U.S.C. 2764) if—

(A) The borrowing country is released from its contractual liability to repay the

United States government with respect to those credits or guaranteed loans;

(B) The repayment period exceeds twelve years; or

(C) The interest rate charged is less than the market rate of interest as defined in 22 U.S.C. 2763(c)(2)(B);

unless the FSC shows to the satisfaction of the Commissioner that, under the conditions existing at the time of the sale, the purchaser had a reasonable opportunity to purchase, on competitive terms from a seller who was not a U.S. person, goods which were substantially identical to this property and which were not manufactured, produced, grown, or extracted in the United States. Information regarding whether an export is financed, in whole or in part, with funds derived from the programs identified in this subdivision may be obtained from the Comptroller, Defense Security Assistance Agency, Department of Defense, Washington, DC 20301.

(4) *Sales or leases of export property and furnishing of architectural or engineering services for use by the United States*—(i) *In general.* Foreign trading gross receipts of a FSC do not include gross receipts described in paragraph (b), (c), or (e) of this section if a sale or lease of export property, or the furnishing of architectural or engineering services, is for use by the United States or an instrumentality thereof in any case in which any law or regulation requires in any manner the purchase or lease of property manufactured, produced, grown, or extracted in the United States or requires the use of architectural or engineering services performed by a United States person. See section 924(f)(1)(A)(ii). For example, a sale by a FSC of export property to the Department of Defense for use outside the United States would not produce foreign trading gross receipts for the FSC if the Department of Defense purchased the property from appropriated funds subject to either any provision of the Department of Defense Federal Acquisition Regulations Supplement (48 CFR Chapter 2) or any appropriations act for the Department of Defense for the applicable year if the regulations or appropriations act requires that the items purchased must have been grown, reprocessed, reused, or produced in the United States. The Department of Defense's regulations do not require that items purchased by the Department for resale in post or base exchanges and commissary stores located on United States military installations in foreign countries be items grown, reprocessed, reused or produced in the United States.

Therefore, receipts arising from the sale by an FSC to those post or base exchanges and commissary stores will not be excluded from the definition of foreign trading gross receipts by this paragraph (g)(4).

(ii) *Direct or indirect sales or leases.* Any sale or lease of export property is for use by the United States or an instrumentality thereof if such property is sold or leased by a FSC (or by a principal for whom the FSC acts as commission agent) to—

(A) A person who is a related person with respect to the FSC or such principal and who sells or leases the property for use by the United States or an instrumentality thereof, or

(B) A person who is not a related person with respect to the FSC or such principal if, at the time of the sale or lease, there is an agreement or understanding that the property will be sold or leased for use by the United States or an instrumentality thereof (or if a reasonable person would have known at the time of the sale or lease that the property would be sold or leased for use by the United States or an instrumentality thereof) within 3 years after the sale or lease.

(iii) *Excluded programs.* The provisions of subdivisions (4) (i) and (ii) of this paragraph do not apply in the case of a purchase by the United States or an instrumentality thereof if the purchase is pursuant to—

(A) The Foreign Military Sales Act, as amended (22 U.S.C. 2751 *et seq.*), or a program under which the United States government purchases property for resale, on commercial terms, to a foreign government or agency or instrumentality thereof, or

(B) A program (whether bilateral or multilateral) under which sales to the United States government are open to international competitive bidding.

(5) *Services.* Foreign trading gross receipts of a FSC do not include gross receipts described in paragraph (d) of this section (concerning related and subsidiary services) if the services from which such gross receipts are derived are related and subsidiary to the sale or lease of property which results in excluded receipts under this paragraph.

(6) *Receipts within controlled group.* (i) For purposes of the transfer pricing methods of section 925(a), gross receipts of a corporation do not constitute foreign trading gross receipts for any taxable year of the corporation if at the time of the sale, lease, or other transaction resulting in the gross receipts, the corporation and the person from whom the gross receipts are directly or indirectly derived (whether

or not such corporation and such person are the same person) are members of the same controlled group, and either

(A) The corporation and the person each qualifies as a FSC (or if related FSCs are commission agents of each party to the transaction) for its taxable year in which its receipts arise, or

(B) With regard to sale transactions, a sale of export property to a FSC (or to a related person if the FSC is the commission agent of the related person) by a non-FSC within the same controlled group follows any sale of the export property to a FSC (or to a related person if the FSC is the commission agent of the related person) within the same controlled group if foreign trading gross receipts resulted from the sale. Thus for example, assume that R, S, X, and Y are members of the same controlled group and that X and Y are FSCs. If R sells property to S and pays X a commission relating to that sale and if S sells the same property to an unrelated foreign party and pays Y a commission relating to that sale, the receipts received by X from the sale of such property by R to S will be considered to be derived from Y, a FSC which is a member of the same controlled group as X, and thus will not result in foreign trading gross receipts to X. The receipts received by Y from the sale to an unrelated foreign party may, however, result in foreign trading gross receipts to Y. For another example, if R and S both assign the commissions to X, receipts derived from the sale from R to S will be considered to be derived from X acting as commission agent for S and will not result in foreign trading gross receipts to X. Receipts derived by X from the sale of property by S to an unrelated foreign party may, however, constitute foreign trading gross receipts.

(ii) Section 1.927(a)-1T(f)(2) provides rules regarding property not constituting export property in certain cases where such property is leased to any corporation which is a member of the same controlled group as the lessor.

(7) *Factoring of receivables by a related supplier.* If an account receivable arising with respect to export property is transferred to any person for an amount reflecting a discount from the selling price of the export property, then the gross receipts from the sale which are treated as foreign trading gross receipts for purposes of computing a FSC's profit under the administrative pricing methods of section 925(a) (1) and (2) shall be reduced by the amount of the discount. See § 1.925(a)-1T(f) *Example (11)* for illustration of how this special rule affects computation of

combined taxable income of a FSC and its related supplier.

(h) *Definition of "controlled group"*. For purposes of sections 921 through 927 and the regulations under those sections, the term "controlled group" has the same meaning as is assigned to the term "controlled group of corporations" by section 1563(a), except that (1) the phrase "more than 50 percent" is substituted for the phrase "at least 80 percent" each place the latter phrase appears in section 1563(a), and (2) section 1563(b) shall not apply. Thus, for example, a foreign corporation subject to tax under section 882 may be a member of a controlled group. Furthermore, two or more corporations (including a foreign corporation) are members of a controlled group at any time such corporations meet the requirements of section 1563(a) (as modified by this paragraph).

(i) *FSC's entitlement to income*—(1) *Application of administrative pricing rules of section 925(a)*. A corporation which meets the requirements of section 922(a) (or section 922(b) if the corporation elects small FSC status) and § 1.921-2(a) (Q&A1) to be treated as an FSC (or small FSC) for a taxable year is entitled to income, and the administrative pricing rules of section 925(a) (1) or (2) apply, in the case of any transaction described in § 1.925(a)-1T(b)(iii) between the FSC and its related supplier (as defined in § 1.927(d)-2T(a)) as long as the FSC, or someone under contract to it, satisfies the requirements of section 925(c). The requirements of section 925(c) must be met by a commission FSC as well as by a buy-sell FSC. See § 1.925(a)-1T(a)(3)(i) and (b)(2)(ii).

(2) *Other transactions*. In the case of a transaction to which the provisions of paragraph (i)(1) of this section do not apply but from which an FSC derives gross receipts, the income to which the FSC is entitled as a result of the transaction is determined pursuant to the terms of the contract for the transaction and, if applicable, section 482 and the regulations under that section. For applicability of the section 482 transfer pricing method, see § 1.925(a)-1T (a)(3)(ii) and (b)(2)(i).

(j) *Small FSC limitation*—(1) *In general*. Under section 924(b)(2)(B), in determining exempt foreign trade income of a small FSC, the foreign trading gross receipts of the small FSC for the taxable year which exceed \$5 million are not taken into account. The foreign trading gross receipts of the small FSC not taken into account for purposes of computing the small FSC's exempt foreign trade income shall be taken into account in computing the

small FSC's non-exempt foreign trade income. If the foreign trading gross receipts of the small FSC exceed the \$5 million limitation, the small FSC may select the gross receipts to which the limitation is allocated. See section 922(b) and § 1.921-2(b) (Q&A3) for a definition of a small FSC.

(2) *Members of a controlled group limited to one \$5 million amount*—(i) *General rule*. All small FSCs which are members of a controlled group on a December 31, shall, for their taxable years which include that December 31, be limited to one \$5 million amount. The \$5 million amount shall be allocated equally among the member small FSCs of the controlled group for their taxable years including that December 31, unless all of the member small FSCs consent to an apportionment plan providing for an unequal allocation of the \$5 million amount. The apportionment plan shall provide for the apportionment of a fixed dollar amount to one or more of the corporations, and the sum of the amounts so apportioned shall not exceed the \$5 million amount. If the taxable year including the December 31 of any member small FSC is a short period (as defined in section 443), the portion of the \$5 million amount allocated to that member small FSC for that short period under the preceding sentence shall be reduced to the amount which bears the same ratio to the amount so allocated as the number of days in such short period bears to 365. The consent of each member small FSC to the apportionment plan for the taxable year shall be signified by a statement which satisfies the requirements of and is filed in the manner specified in § 1.1561-3(b). An apportionment plan may be amended in the manner prescribed in § 1.1561-3(c), except that an original or an amended plan may not be adopted with respect to a particular December 31 if at the time the original or amended plan is sought to be adopted, less than 12 full months remain in the statutory period (including extensions) for the assessment of a deficiency against any shareholder of a member small FSC the tax liability of which would change by the adoption of the original or amended plan. If less than 12 full months of the period remain with respect to any such shareholder, the director of the service center with which the shareholder files its income tax return will, upon request, enter into an agreement extending the statutory period for the limited purpose of assessing any deficiency against that shareholder attributable to the adoption of the original or amended apportionment plan.

(ii) *Membership determined under section 1563(b)*. For purposes of this paragraph (j)(2), the determination of whether a small FSC is a member of a controlled group of corporations with respect to any taxable year shall be made in the manner prescribed in section 1563(b) and the regulations under that section.

(iii) *Certain short taxable years*—(A) *General rule*. If a small FSC has a short period (as defined in section 443) which does not include a December 31, and that small FSC is a member of a controlled group of corporations which includes one or more other small FSC's with respect to the short period, then the amount described in section 924(b)(2)(B) with respect to the short period of that small FSC shall be determined by—

(1) Dividing \$5 million by the number of small FSCs which are members of that group on the last day of the short period, and

(2) Multiplying the result by a fraction, the numerator of which is the number of days in the short period and the denominator of which is 365.

For purposes of the preceding sentence, section 1563(b) shall be applied as if the last day of the short period were substituted for December 31. Except as provided in subdivision (2)(iii)(B) of this paragraph, the small FSC having a short period not including a December 31 may not enter into an apportionment plan with respect to the short period.

(B) *Exception*. If the short period not including a December 31 of two or more small FSCs begins on the same date and ends on the same date and those small FSCs are members of the same controlled group, those small FSCs may enter into an apportionment plan for such short period in the manner provided in subdivision (2)(i) of this paragraph with respect to the combined amount allowed to each of those small FSCs under subdivision (2)(iii)(A) of this paragraph.

§ 1.925(a)-1T Temporary Regulations; Transfer pricing rules for FSCs.

(a) *Scope*—(1) *Transfer pricing rules*. In the case of a transaction described in paragraph (b) of this section, section 925 permits a related party to a FSC to determine the allowable transfer price charged the FSC (or commission paid to the FSC) by its choice of the three transfer pricing methods described in paragraphs (c) (2), (3), and (4) of this section: The "1.83 percent" gross receipts method and the "23 percent" combined taxable income method (the administrative pricing rules) of section 925(a) (1) and (2), respectively, and the

section 482 method of section 925(a)(3). (Any further reference to a FSC in this section shall include a small FSC unless indicated otherwise.) Subject to the special no-loss rule of § 1.925(a)-1T(e)(1)(iii), any, or all, of the transfer pricing methods may be used in the same taxable year of the FSC for separate transactions (or separate groups of transactions). If either of the administrative pricing methods (the gross receipts method or combined taxable income method) is applied to a transaction, the Commissioner may not make distributions, apportionments, or allocations as provided by section 482 and the regulations under that section. The transfer price charged the FSC (or the commission paid to the FSC) on a transaction with a person that is not a related party to the FSC may be determined in any manner agreed to by the FSC and that person. However, the Commissioner will use special scrutiny to determine whether a person selling export property to an FSC (or paying a commission to an FSC) is a related party to the FSC with respect to a transaction if the FSC earns a profit on the transaction in excess of the profit it would have earned had the administrative pricing rules applied to the transaction.

(2) *Special rules.* For rules as to certain "incomplete transactions" and for computing full costing combined taxable income, see paragraphs (c) (5) and (6) of this section. For a special rule as to cooperatives and computation of their combined taxable incomes, see paragraph (c)(7) of this section. Grouping of transactions for purposes of applying the administrative pricing method chosen is provided for by paragraph (c)(8) of this section. The rules in paragraph (c) of this section are directly applicable only in the case of sales or exchanges of export property to an FSC for resale, and are applicable by analogy to leases, commissions, and services as provided in paragraph (d) of this section. For a rule providing for the recovery of the FSC's costs in an overall loss situation, see paragraph (e)(1)(i) of this section. Paragraph (e)(2) of this section provides for the applicability of section 482 to resales by the FSC to related persons or to sales between related persons prior to the sale to the FSC. Paragraph (e)(3) of this section provides for the creation of receivables if the transfer price, rental payment, commission or payment for services rendered is not paid by the due date of the FSC's income tax return for the taxable year under section 6072(b), including extensions provided for by section 6081. Provisions for the

subsequent determination and further adjustment to the relevant amounts are set forth in paragraphs (e) (4) and (5) of this section. Paragraph (f) of this section has several examples illustrating the provisions of this section. Section 1.925(b)-1T prescribes the marginal costing rules authorized by section 925(b)(2). Section 1.927(d)-2T provides definitions of related supplier and related party.

(3) *Performance of substantial economic functions—(i) Administrative pricing methods.* The application of the administrative pricing methods of section 925 (a) (1) and (2) does not depend on the extent to which the FSC performs substantial economic functions beyond those required by section 925(c). See paragraph (b)(2)(ii) of this section and § 1.924(a)-1T(i)(1).

(ii) *Section 482 method.* In order to apply the section 482 method of section 925(a)(3), the arm's length standards of section 482 and the regulations under that section must be satisfied. In applying the standards of section 482, all of the rules of section 482 will apply. Thus, if the FSC would not be recognized as a separate entity, it would also not be recognized on application of the section 482 method. Similarly, if a FSC performs no substantial economic function with respect to a transaction, no income will be allocable to the FSC under the section 482 method. See § 1.924(a)-1T(i)(2). If a related supplier performs services under contract with a FSC, the FSC will not be deemed to have performed substantial economic functions for purposes of the section 482 method unless it compensates the related supplier under the provisions of § 1.482-2(b) (1) through (7). See § 1.925(a)-1T(c)(6)(ii) for the applicability of the regulations under section 482 in determination of the FSC's profit under the administrative pricing methods.

(b) *Transactions to which section 925 applies—(1) In general.* The transfer pricing methods of section 925 (the administrative pricing methods and the section 482 method) will apply, generally, only if a transaction, or group of transactions, gives rise to foreign trading gross receipts (within the meaning of section 924(a) and § 1.924(a)-1T) to the FSC (or small FSC, as defined in section 922(b) and § 1.921-2(b) (Q&A3)). However, the transfer pricing methods will apply as well if the FSC is acting as commission agent for a related supplier with regard to a transaction, or group of transactions, on which the related supplier is the principal if the transaction, or group of transactions, would have resulted in

foreign trading gross receipts had the FSC been the principal.

(2) *Application of the transfer pricing rules—(i) Section 482 method.* The section 482 transfer pricing method may be applied to any transaction between a related supplier and a FSC if the requirements of paragraph (a)(3)(ii) of this section have been met.

(ii) *Administrative pricing methods.* The administrative pricing methods may be applied in situations in which the FSC is either the principal or commission agent on the transaction, or group of transactions, only if the requirements of section 925(c) are met. Section 925(c) requires that the FSC performs all the activities described in subsections (d)(1)(A) and (e) of section 924 that are attributable to a particular transaction, or group of transactions. The FSC need not perform any activities with respect to a particular transaction merely to comply with section 925(c) if that activity would not have been performed but for the requirements of that subsection. The FSC need not perform all of the activities outside the United States. None of the activities need be performed outside the United States by a small FSC. Rather than the FSC itself performing the activities required by section 925(c), another person under contract, written or oral, directly or indirectly, with the FSC may perform the activities (see § 1.924(d)-1(b)). If a related supplier is performing the required activities on behalf of the FSC with regard to a transaction, or group of transactions, the requirements of section 925(c) will be met if the FSC pays the related supplier an amount equal to the direct and indirect expenses related to the required activities. See paragraph (c)(6)(ii) of this section for the amount of compensation due the related supplier. The payment made to the related supplier must be reflected on the FSC's books and must be taken into account in computing the FSC's and related supplier's combined taxable income. If it is determined that the related supplier was not compensated for all the expenses related to the required activities or if the entire payment is not reflected on the FSC's books or in computing combined taxable income, the administrative pricing methods may be used but proper adjustments will be made to the FSC's and related supplier's books or income. At the election of the FSC and related supplier, the requirements of section 925(c) will be deemed to have been met if the related supplier is paid by the FSC an amount equal to all of the costs under paragraph (c)(6)(iii)(D) of this section (limited by paragraph (c)(6)(ii) of this

section) related to the export sale, other than expenses relating to activities performed directly by the FSC or by a person other than the related supplier, and if that payment is reflected on the FSC's books and in computing the FSC's and related supplier's combined taxable income on the transaction, or group of transactions. If it is determined that the related supplier was not compensated for all its expenses or if the entire payment is not reflected on the FSC's books or in computing combined taxable income, the administrative pricing methods may be used but proper adjustments will be made to the FSC's and related supplier's books or income. All activities that are performed in connection with foreign military sales are considered to be performed by the FSC, or under contract with the FSC, if they are performed by the United States government even though the United States government has not contracted for the performance of those activities. All actual costs incurred by the FSC and related supplier in connection with the performance of those activities must be taken into account, however, in determining the combined taxable income of the FSC and related supplier.

(iii) *Allowable transactions for purposes of the administrative pricing methods.* If the required performance of activities has been met, the administrative pricing methods may be applied to a transaction between a related supplier and an FSC only in the following circumstances.

(A) The related supplier sells export property (as defined in section 927(a) and § 1.927(a)-1T) to the FSC for resale or the FSC acts as a commission agent for the related supplier on sales by the related supplier of export property to third parties, whether or not related parties. For purposes of this section, references to sales include references to exchanges or other dispositions.

(B) The related supplier leases export property to the FSC for sublease for a comparable period with comparable terms of payment, or the FSC acts as commission agent for the related supplier on leases of export property by the related supplier, to third parties whether or not related parties.

(C) Services are furnished by an FSC as principal or by a related supplier if an FSC is a commission agent for the related supplier which are related and subsidiary to any sale or lease by the FSC, acting as principal or commission agent, of export property under subdivision (iii) (A) and (B) of this paragraph.

(D) Engineering or architectural services for construction projects located (or proposed for location)

outside of the United States are furnished by the FSC if the FSC is acting as principal, or by the related supplier if the FSC is a commission agent for the related supplier, with respect to the furnishing of the services to a third party whether or not a related party.

(E) The FSC acting as principal, or the related supplier where the FSC is a commission agent, furnishes managerial services in furtherance of the production of foreign trading gross receipts of an unrelated FSC or the production of qualified export receipts of an unrelated interest charge DISC.

This subdivision (iii)(E) shall not apply for any taxable year unless at least 50 percent of the gross receipts for such taxable year of the FSC or of the related supplier, whichever party furnishes the managerial services, is derived from activities described in subdivisions (iii) (A), (B), or (C) of this paragraph.

(c) *Transfer price for sales of export property*—(1) *In general.* Under this paragraph, rules are prescribed for computing the allowable price for a transfer from a related supplier to an FSC in the case of a sale, described in paragraph (b)(2)(iii)(A) of this section, of export property.

(2) *The "1.83 percent" gross receipts method*—Under the gross receipts method of pricing, described in section 925(a)(1), the transfer price for a sale by the related supplier to the FSC is the price as a result of which the profit derived by the FSC from the sale will not exceed 1.83 percent of the foreign trading gross receipts of the FSC derived from the sale of the export property. Pursuant to section 925(d), the amount of profit derived by the FSC under this method may not exceed twice the amount of profit determined under, at the related supplier's election, either the combined taxable income method of § 1.925(a)-1T(c)(3) or the marginal costing rules of § 1.925(b)-1T. For FSC taxable years beginning after December 31, 1986, if the related supplier elects to determine twice the profit determined under the combined taxable income method using the marginal costing rules, because of the no-loss rule of § 1.925(a)-1T(e)(1)(i), the profit that may be earned by the FSC is limited to 100% of the full costing combined taxable income as determined under § 1.925(a)-1T(c)(3) and (6). Interest or carrying charges with respect to the sale are not foreign trading gross receipts.

(3) *The "23 percent" combined taxable income method.* Under the combined taxable income method of pricing, described in section 925(a)(2), the transfer price for a sale by the related supplier to the FSC is the price

as a result of which the profit derived by the FSC from the sale will not exceed 23 percent of the full costing combined taxable income (as defined in paragraph (c)(6) of this section) of the FSC and the related supplier attributable to the foreign trading gross receipts from such sale.

(4) *Section 482 method.* If the methods of paragraph (c) (2) and (3) of this section are inapplicable to a sale or if the related supplier does not choose to use them, the transfer price for a sale by the related supplier to the FSC is to be determined on the basis of the sales price actually charged but subject to the rules provided by section 482 and the regulations for that section and by § 1.925(a)-1T(a)(3)(ii).

(5) *Incomplete transactions.* (i) For purposes of the gross receipts and combined taxable income methods, if export property which the FSC purchased from the related supplier is not resold by the FSC before the close of either the FSC's taxable year or the taxable year of the related supplier during which the export property was purchased by the FSC from the related supplier, then—

(A) The transfer price of the export property sold by the FSC during that year shall be computed separately from the transfer price of the export property not sold by the FSC during that year.

(B) With respect to the export property not sold by the FSC during that year, the transfer price paid by the FSC for that year shall be the related supplier's cost of goods sold (see paragraph (c)(6)(iii)(C) of this section) with respect to the property.

(C) For the subsequent taxable year during which the export property is resold by the FSC, an additional amount shall be paid by the FSC (to be treated as income for the later year in which it is received or accrued by the related supplier) equal to the excess of the amount which would have been the transfer price under this section had the transfer to the FSC by the related supplier and the resale by the FSC taken place during the taxable year of the FSC during which it resold the property over the amount already paid under subdivision (B) of this paragraph.

(D) The time and manner of payment of transfer prices required by subdivisions (i) (B) and (C) of this paragraph shall be determined under paragraphs (e) (3), (4) and (5) of this section.

(ii) For purposes of this paragraph, a FSC may determine the year in which it received property from a related supplier and the year in which it resells property in accordance with the method

of identifying goods in its inventory properly used under section 471 or section 472 (relating respectively to the general rule for inventories and to the rule for LIFO inventories).

Transportation expense of the related supplier in connection with a transaction to which this paragraph applies shall be treated as an item of cost of goods sold with respect to the property if the related supplier includes the cost of intracompany transportation between its branches, divisions, plants, or other units in its cost of goods sold (see paragraph (c)(6)(iii)(C) of this section).

(6) *Full costing combined taxable income*—(i) *In general*. For purposes of section 925 and this section, if a FSC is the principal on the sale of export property, the full costing combined taxable income of the FSC and its related supplier from the sale is the excess of the foreign trading gross receipts of the FSC from the sale over the total costs of the FSC and related supplier including the related supplier's cost of goods sold and its and the FSC's noninventoriable costs (see § 1.471-11(c)(2)(ii)) which relate to the foreign trading gross receipts. Interest or carrying charges with respect to the sale are not foreign trading gross receipts.

(ii) *Section 482 applicability*. Combined taxable income under this paragraph shall be determined after taking into account under paragraph (e)(2) of this section all adjustments required by section 482 with respect to transactions to which the section is applicable. If a related supplier performs services under contract with a FSC, the FSC shall compensate the related supplier an arm's length amount under the provisions of § 1.482-2(b) (1) through (6). Section 1.482-2(b)(7), which provides that an arm's length charge shall not be deemed equal to costs or deductions with respect to services which are an integral part of the business activity of either the member rendering the services (*i.e.*, the related supplier) or the member receiving the benefit of the services (*i.e.*, the FSC), shall not apply if the administrative pricing methods of section 925(a) (1) and (2) are used to compute the FSC's profit and if the related supplier is the person rendering the services. Section 1.482-2(b)(7) shall apply, however, if a related person other than the related supplier is the person rendering the services or if the section 482 method of section 925(a)(3) is used to compute the FSC's profit. See § 1.925(a)-1T(a)(3)(ii). For a special rule for computation of combined taxable income where the related supplier is a

qualified cooperative shareholder of the FSC, see paragraph (c)(7) of this section.

(iii) *Rules for determination of gross receipts and total costs*. In determining the gross receipts of the FSC and the total costs of the FSC and related supplier which relate to such gross receipts, the rules set forth in subdivisions (iii) (A) through (E) of this paragraph shall apply.

(A) Subject to the provisions of subdivisions (iii) (B) through (E) of this paragraph, the methods of accounting used by the FSC and related supplier to compute their taxable incomes will be accepted for purposes of determining the amounts of items of income and expense (including depreciation) and the taxable year for which those items are taken into account.

(B) A FSC may, generally, choose any method of accounting permissible under section 446(c) and the regulations under that section. However, if a FSC is a member of a controlled group (as defined in section 927(d)(4) and § 1.924(a)-1T(h)), the FSC may not choose a method of accounting which, when applied to transactions between the FSC and other members of the controlled group, will result in a material distortion of the income of the FSC or of any other member of the controlled group. Changes in the method of accounting of a FSC are subject to the requirements of section 446(e) and the regulations under that section.

(C) Cost of goods sold shall be determined in accordance with the provisions of § 1.61-3. See sections 471 and 472 and the regulations thereunder with respect to inventories. With respect to property to which an election under section 631 applies (relating to cutting of timber considered as a sale or exchange), cost of goods sold shall be determined by applying § 1.631-1 (d)(3) and (e) (relating to fair market value as of the beginning of the taxable year of the standing timber cut during the year considered as its cost).

(D) Costs (other than cost of goods sold) which shall be treated as relating to gross receipts from sales of export property are the expenses, losses, and deductions definitely related, and therefore allocated and apportioned thereto, and a ratable part of any other expenses, losses, or deductions which are not definitely related to any class of gross income, determined in a manner consistent with the rules set forth in § 1.861-8. The deduction for depletion allowed by section 611 relates to gross receipts from sales of export property and shall be taken into account in computing the combined taxable income of the FSC and its related supplier.

(7) *Cooperatives and combined taxable income method*. If a qualified cooperative, as defined in section 1381(a), sells export property to a FSC of which it is a shareholder, the combined taxable income of the FSC and the cooperative shall be computed without taking into account deductions allowed under section 1382 (b) and (c) for patronage dividends, per-unit retain allocations and nonpatronage distributions. The FSC and cooperative must take into account, however, when computing combined taxable income, the cooperative's cost of goods sold, or cost of purchases.

(8) *Grouping transactions*. (i) The determinations under this section are to be made on a transaction-by-transaction basis. However, at the annual choice made by the related supplier if the administrative pricing methods are used, some or all of these determinations may be made on the basis of groups consisting of products or product lines. The election to group transactions shall be evidenced on the FSC income tax return for the taxable year.

(ii) A determination by the related supplier as to a product or a product line will be accepted by a district director if such determination conforms to either of the following standards: Recognized trade or industry usage, or the two-digit major groups (or any inferior classifications or combinations thereof, within a major group) of the Standard Industrial Classification as prepared by the Statistical Policy Division of the Office of Management and Budget, Executive Office of the President. A product shall be included in only one product line for purposes of this section if a product otherwise falls within more than one product line classification.

(iii) A choice by the related supplier to group transactions for a taxable year on a product or product line basis shall apply to all transactions with respect to that product or product line consummated during the taxable year. However, the choice of a product or product line grouping applies only to transactions covered by the grouping and, as to transactions not encompassed by the grouping, the determinations are to be made on a transaction-by-transaction basis. For example, the related supplier may choose a product grouping with respect to one product and use the transaction-by-transaction method for another product within the same taxable year. Sale transactions may not be grouped, however, with lease transactions.

(iv) For purposes of this section, transactions involving military property, as defined in section 923(a)(5) and

§ 1.923-1T(b)(3)(ii), may be grouped only with other military property included within the same product or product line grouping determined under the standards of subdivision (8)(ii) of this paragraph. Non-military property included within a product or product line grouping which includes military property may be grouped, at the election of the related supplier, under the general grouping rules of subdivisions (i) through (iii) of this paragraph.

(v) A special grouping rule applies to agricultural and horticultural products sold to the FSC by a qualified cooperative if the FSC satisfies the requirements of section 923(a)(4). Section 923(a)(4) increases the amount of the FSC's exempt foreign trade income with regard to sales of these products, see § 1.923-1T(b)(2). This special grouping rule provides that if the related supplier elects to group those products that no other export property may be included within that group. Export property which would have been grouped under the general grouping rules of subdivisions (i) through (iii) of this paragraph with the export property covered by this special grouping rule may be grouped, however, at the election of the related supplier, under the general grouping rules.

(vi) For rules as to grouping certain related and subsidiary services, see paragraph (d)(3)(ii) of this section.

(vii) If there is more than one FSC (or more than one small FSC) within a controlled group of corporations, the same grouping of transactions, if any, must be used by all FSCs (or small FSCs) within the controlled group. If the same grouping of transactions is required by this subdivision, and if grouping is elected, the same transfer pricing method must be used to determine each FSC's (or small FSC's) taxable income with respect to that grouping.

(viii) The product or product line groups that are established for purposes of determining combined taxable income may be different from the groups that are established with regard to economic processes (see § 1.924(d)-1(e)).

(d) *Rules under section 925(a) (1) and (2) for transactions other than sales by an FSC.* The following rules are prescribed for purposes of applying the gross receipts method or combined taxable income method to transactions other than sales by an FSC.

(1) *Leases.* In the case of a lease of export property by a related supplier to a FSC for sublease by the FSC, the amount of rent the FSC must pay to the related supplier shall be computed in a manner consistent with the rules in paragraph (c) of this section for

computing the transfer price in the case of sales and resales of export property under the gross receipts method or combined taxable income method. Transactions may not be so grouped on a product or product line basis under the rules of paragraph (c)(8) of this section as to combine in any one group of transactions both lease transactions and sale transactions.

(2) *Commissions.* If any transaction to which section 925 applies is handled on a commission basis for a related supplier by a FSC and if commissions paid to the FSC give rise to gross receipts to the related supplier which would have been foreign trading gross receipts under section 924(a) had the FSC made the sale directly then—

(i) The administrative pricing methods of section 925(a) (1) and (2) may be used to determine the FSC's commission income only if the requirements of section 925(c) (relating to activities that must be performed in order to use the administrative pricing methods) are met, see § 1.925(a)-1T(b)(2)(ii).

(ii) The amount of the income that may be earned by the FSC in any year is the amount, computed in a manner consistent with paragraph (c) of this section, which the FSC would have been permitted to earn under the gross receipts method, the combined taxable income method, or the section 482 method if the related supplier had sold (or leased) the property or service to the FSC and the FSC had in turn sold (or subleased) to a third party, whether or not a related party.

(iii) The combined taxable income of a FSC and the related supplier from the transaction is the excess of the related supplier's gross receipts from the transaction which would have been foreign trading gross receipts had the sale been made by the FSC directly over the related supplier's and the FSC's total costs, excluding the commission paid or payable to the FSC, but including the related supplier's cost of goods sold and its and the FSC's noninventoriable costs (see § 1.471-11(c)(2)(ii)) which relate to the gross receipts from the transaction. The related supplier's gross receipts for purposes of the administrative pricing methods shall be reduced by carrying charges, if any, as computed under § 1.927(d)-1(a)(Q&A2). These carrying charges shall remain income of the related supplier.

(iv) The maximum commission the FSC may charge the related supplier is the amount of income determined under subdivisions (ii) and (iii) of this paragraph plus the FSC's total costs for the transaction as determined under paragraph (c)(6) of this section.

(3) *Receipts from services—(i) Related and subsidiary services attributable to the year of the export transaction.* The gross receipts for related and subsidiary services described in paragraph (b)(2)(iii)(C) of this section shall be treated as part of the receipts from the export transaction to which such services are related and subsidiary, but only if, under the arrangement between the FSC and its related supplier and the accounting method otherwise employed by the FSC, the income from such services is includible for the same taxable year as income from such export transaction.

(ii) *Other services.* Income from the performance of related and subsidiary services will be treated as a separate type of income if subdivision (i) of this paragraph does not apply. Income from the performance of engineering and architectural services and certain managerial services, as defined in paragraphs (b)(2)(iii) (D) and (E), respectively, of this section, will in all situations be treated as separate types of income. If this subdivision (ii) applies, the amount of taxable income which the FSC may derive for any taxable year shall be determined under the arrangement between the FSC and its related supplier and shall be computed in a manner consistent with the rules in paragraph (c) of this section for computing the transfer price in the case of sales for resale of export property under the transfer pricing rules of section 925. Related and subsidiary services to which the above subdivision (i) of this paragraph does not apply may be grouped, under the rules for grouping of transactions in paragraph (c)(8) of this section, with the products or product lines to which they are related and subsidiary, so long as the grouping of services chosen is consistent with the grouping of products or product lines chosen for the taxable year in which either the products or product lines were sold or in which payment for the services is received or accrued. Grouping of transactions shall not be allowed with respect to the determination of taxable income which the FSC may derive from services described in paragraph (b)(2)(iii) (D) or (E) of this section whether performed by the FSC or by the related supplier. Those determinations shall be made only on a transaction-by-transaction basis.

(e) *Special rules for applying paragraphs (c) and (d) of this section—(1) Limitation on FSC income ("no loss" rules).* (i) If there is a combined loss on a transaction or group of transactions, a FSC may not earn a profit under either

the combined taxable income method or the gross receipts method. Also, for FSC taxable years beginning after December 31, 1986, in applying the gross receipts method, the FSC's profit may not exceed 100% of full costing combined taxable income determined under the full costing method of § 1.925(a)-1T(c) (3) and (6). This rule prevents pricing at a loss to the related supplier. The related supplier may in all situations set a transfer price or rental payment or pay a commission in an amount that will allow the FSC to recover an amount not in excess of its costs, if any, even if to do so would create, or increase, a loss in the related supplier.

(ii) For purposes of determining whether a combined loss exists, the basis for grouping transactions chosen by the related supplier under paragraph (c)(8) of this section for the taxable year shall apply.

(iii) If a FSC recognizes income while the related supplier recognizes a loss on a sale transaction under the section 482 method, neither the combined taxable income method nor the gross receipts method may be used by the FSC and related supplier (or by a FSC in the same controlled group and the related supplier) for any other sale transaction, or group of sale transactions, during a year which fall within the same three digit Standard Industrial Classification as the subject sale transaction. The reason for this rule is to prevent the segregation of transactions for the purposes of allowing the related supplier to recognize a loss on the subject transactions, while allowing the FSC to earn a profit under the administrative pricing methods on other transactions within the same three digit Standard Industrial Classification.

(2) *Relationship to section 482.* In applying the administrative pricing methods, it may be necessary to first take into account the price of a transfer (or other transaction) between the related supplier (or FSC) and a related party which is subject to the arm's length standard of section 482. Thus, for example, if a related supplier sells to a FSC export property which the related supplier purchased from related parties, the costs taken into account in computing the combined taxable income of the FSC and the related supplier are determined after any necessary adjustment under section 482 of the price paid by the related supplier to the related parties. In applying section 482 to a transfer by a FSC to a related party, the parties are treated as if they were a single entity carrying on all the functions performed by the FSC and the related supplier with respect to the

transaction. The FSC shall be allowed to receive under the section 482 standard the amount the related supplier would have received had there been no FSC.

(3) *Creation of receivables.* (i) If the amount of the transfer price or rental payment actually charged by a related supplier to a FSC or the sales commission actually charged by a FSC to a related supplier has not been paid, an account receivable and payable will be deemed created as of the due date under section 6072(b), including extensions provided for under section 6081, of the FSC's tax return for the taxable year of the FSC during which a transaction to which section 925 is applicable occurs. The receivable and payable will be in an amount equal to the difference between the amount of the transfer price or rental payment or commission determined under section 925 and this section and the amount (if any) actually paid or received. For example, a calendar year FSC's related supplier paid the FSC on July 1, 1985, a commission of \$50 on the sale of export property. On September 15, 1986, the extended due date of the FSC's income tax return for taxable year 1985, the related supplier determined that the commission should have been \$60. The additional \$10 of commission had not been paid. Accordingly, an interest-bearing payable to the FSC from the related supplier in the amount of \$10 was created as of September 15, 1986. A \$10 interest bearing receivable was also created on the FSC's books.

(ii) An indebtedness arising under the above subdivision (i) shall bear interest at an arm's length rate, computed in the manner provided by § 1.482-2(a)(2), from the due date under section 6072(b), including extensions provided for under section 6081, of the FSC's tax return for the taxable year of the FSC in which the transaction occurred which gave rise to the indebtedness to the date of payment of the indebtedness. The interest so computed shall be accrued and included in the taxable income of the person to whom the indebtedness is owed for each taxable year during which the indebtedness is unpaid if that person is an accrual basis taxpayer or when the interest is paid if a cash basis taxpayer. Because the transactions covered by this subdivision are between the related supplier and FSC, the carrying charges provisions of § 1.927(d)-1(a) do not apply.

(iii) Payment of dividends, transfer prices, rents, commissions, service fees, receivables, or payables may be in the form of money, property, sales discount, or an accounting entry offsetting the amount due the related supplier, or FSC,

whichever applies, against an existing debt of the other party to the transaction. This provision does not eliminate the requirement that actual cash payments be made by the related supplier to a commission FSC if the receipt of payment test of section 924(e)(4) is used to meet the foreign economic process requirements of section 924(d). The offset accounting entries must be clearly identified in both the related supplier's and FSC's books of account.

(4) *Subsequent determination of transfer price, rental income or commission.* The FSC and its related supplier would ordinarily determine under section 925 and this section the transfer price or rental payment payable by the FSC or the commission payable to the FSC for a transaction before the FSC files its return for the taxable year of the transaction. After the FSC has filed its return, a redetermination of those amounts by the Commissioner may only be made if specifically permitted by a Code provision or regulations under the Code. Such a redetermination would include a redetermination by reason of an adjustment under section 482 and the regulations under that section or section 861 and § 1.861-8 which affects the amounts which entered into the determination. In addition, a redetermination may be made by the FSC and related supplier if their taxable years are still open under the statute of limitations for making claims for refund under section 6511 if they determine that a different transfer pricing method or grouping of transactions may be more beneficial. Also, the FSC and related supplier may redetermine the amount of foreign trading gross receipts and the amount of the costs and expenses that are used to determine the FSC's and related supplier's profits under the transfer pricing methods. Any redetermination shall affect both the FSC and the related supplier. The FSC and the related supplier may not redetermine that the FSC was operating as a commission FSC rather than a buy-sell FSC, and vice versa.

(5) *Procedure for adjustments to redeterminations.* (i) If a redetermination under paragraph (e)(4) of this section is made of the transfer price, rental payment or commission for a transaction, or group of transactions, the person who was underpaid under this redetermination shall establish (or be deemed to have established), at the date of the redetermination, an account receivable from the person with whom it engaged in the transaction equal to the difference between the amounts as

redetermined and the amounts (if any) previously paid and received, plus the amount (if any) of the account receivable determined under paragraph (e)(3) of this section that remains unpaid. A corresponding account payable will be established by the person who underpaid the amount due.

(ii) An account receivable established in accordance with the above subdivision (5)(i) of this paragraph shall bear interest at an arm's length rate, computed in the manner provided by § 1.482-2(a)(2), from the day after the date the account receivable is deemed established to the date of payment. The interest so computed shall be accrued and included in the taxable income for each taxable year during which the account receivable is outstanding of an accrual basis taxpayer or when paid if a cash basis taxpayer.

(iii) In lieu of establishing an account receivable in accordance with the above subdivision (5)(i) of this paragraph for all or part of an amount due a related supplier, the related supplier and FSC are permitted to treat all or part of any current or prior distribution which was made by the FSC as an additional payment of transfer price or rental payment or repayment of commission (and not as a distribution) made as of the date the distribution was made. Any additional amount arising on the redetermination due the related supplier after this treatment shall be represented by an account receivable established under the above subdivision (5)(i) of this paragraph. To the extent that a distribution is so treated under this subdivision (5)(iii), it shall cease to qualify as a distribution for any Federal income tax purpose. If all or part of any distribution made to a shareholder other than the related supplier is recharacterized under this subdivision (5)(iii), the related supplier shall establish an account receivable from that shareholder for the amount so recharacterized. The Commissioner may prescribe by Revenue Procedure conditions and procedures that must be met in order to obtain the relief provided by this subdivision (5)(iii).

(iv) The procedure for adjustments to transfer price provided by this paragraph does not apply to incomplete transactions described in paragraph (c)(5) of this section. Such procedure will, however, be applied to any such transaction with respect to the taxable year in which the transaction is completed.

(f) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). In 1985, F, a FSC, purchases export property from R, a domestic manufacturer of export property. R is F's related supplier. The sale from R to F is made under a written agreement which provides that the transfer price between R and F shall be that price which allocates to F the maximum amount permitted to be received under the transfer pricing rules of section 925. F resells property A in 1985 to an unrelated purchaser for \$1,000. The terms of the sales contract between F and the unrelated purchaser provide that payment of the \$1,000 sales price will be made within 90 days after sale. The purchaser pays the entire sales price within 60 days. F incurs indirect and direct expenses in the amount of \$260 attributable to the sale which relate to the activities and functions referred to in section 924 (c), (d) and (e). In addition, F incurs additional expenses attributable to the sale in the amount of \$35. R's cost of goods sold attributable to the export property is \$550. R incurred direct selling expenses in connection with the sale of \$50. R's deductible general and administrative expenses allocable to all gross income are \$200. Apportionment of those supportive expenses on the basis of gross income does not result in a material distortion of income and is a reasonable method of apportionment. R's direct selling expenses and its general and administrative expenses were not required to be incurred by F. R's gross income from sources other than the transaction is \$17,550 resulting in total gross income of R and F (excluding the transfer price paid by F) of \$18,000 (\$450 plus \$17,550). For purposes of this example, it is assumed that if R sold the export property to F for \$690, the price could be justified as satisfying the standards of section 482. Under these facts, F may earn, under the combined taxable income method, the more favorable of the three transfer pricing rules, a profit of \$23 on the sale. (Unless otherwise indicated, all examples in this section assume that the marginal costing method of § 1.925(b)-1T does not result in a higher profit than the profit under the full costing combined taxable income method of paragraphs (c) (3) and (6) of this section.) F's profit and the transfer price to F from the transaction, using the administrative pricing methods, and F's profit if the transfer price is determined under section 482, would be as follows:

Combined taxable income:	
F's foreign trading gross receipts.....	\$1,000.00
R's cost of goods sold	(550.00)
Combined gross income	450.00
Less:	
R's direct selling expenses	50.00
F's expenses	295.00
Apportionment of R's general and administrative expenses:	
R's total G/A expenses ..	200.00
Combined gross income ..	450.00

R's and F's total gross income (foreign and domestic).....	18,000.00
Apportionment of G/A expenses:	
\$200 × \$450/\$18,000.....	5.00
Total.....	(350.00)
Combined taxable income	100.00

The section 482 method—Transfer price to F and F's profit:
Transfer price to F..... \$690.00

F's profit:	
F's foreign trading gross receipts.....	1,000.00
Less:	
F's cost of goods sold.....	690.00
F's expenses	295.00
Total.....	(985.00)
F's profit.....	15.00

The gross receipts method—
F's profit and transfer price to F:
F's profit—lesser of 1.83% of F's foreign trading gross receipts (\$18.30) or two times F's profit under the combined taxable income method (\$46.00) (See below) (Unless otherwise indicated, all examples in this section assume that the marginal costing method of § 1.925(b)-1T does not result in a higher profit than the profit under the full costing combined taxable income method)

Transfer price to F:	
F's foreign trading gross receipts.....	1,000.00
Less:	
F's expenses	295.00
F's profit.....	18.30
Total.....	(313.30)
Transfer price	686.70

The combined taxable income method— F's profit and transfer price to F:
F's profit—23% of combined taxable income (\$100)

Transfer price to F:	
F's foreign trading gross receipts.....	1,000.00
Less:	
F's expenses	295.00
F's profit.....	23.00
Total.....	(318.00)
Transfer price	682.00

With a profit of \$23 under the most favorable of the transfer pricing methods, F's exempt foreign trade income under section 923 would be \$207.39, computed as follows:

F's foreign trading gross receipts.....	\$1,000.00
F's costs of purchases (transfer price).....	(682.00)
F's foreign trade income.....	318.00
F's exempt foreign trade income $318 \times 15/23$	207.39
F's taxable income would be \$8.00, computed as follows:	
F's foreign trade income.....	\$318.00
F's exempt foreign trade income.....	(207.39)
F's non-exempt foreign trade income.....	110.61
Less:	
F's expenses allocable to non-exempt foreign trade income $295 \times 110.61/318$	(102.61)
F's taxable income.....	8.00

Of F's total expenses, \$192.39 ($295 \times 207.39/318$) are allocated to F's exempt foreign trade income and are disallowed for purposes of computing F's taxable income.

Example (2). Assume the same facts as in *Example (1)* except that the purchaser pays the entire sales price 96 days after delivery, well beyond the 60 day period in which payment must be made to avoid recharacterization of part of the contract price as carrying charges. Therefore, the contract price of \$1,000 includes \$10 of carrying charges, assuming a discount rate of 10%. See § 1.927(d)-1(a) (Q & A2) for computation method for determining amount of carrying charges. Under these facts, F may earn, under the combined taxable income method, the most favorable of the three transfer pricing rules, a profit of \$20.73 on the sale. F's profit and the transfer price to F under the transfer pricing rules, assuming that a carrying charge is incurred, would be as follows:

Combined taxable income:	
F's foreign trading gross receipts.....	\$990.00
R's cost of goods sold.....	(550.00)
Combined gross income.....	440.00
Less:	
R's direct selling expenses.....	50.00
R's apportioned G/A expenses: $200 \times 440/18,000$	4.89
F's expenses.....	295.00
Total.....	(349.89)
Combined taxable income.....	90.11

The combined taxable income method—F's profit and transfer price to F:	
F's profit—23% of combined taxable income (\$90.11).....	\$20.73
Transfer price to F:	
F's foreign trading gross receipts.....	990.00
Less:	
F's expenses.....	295.00
F's profit.....	20.73
Total.....	(315.73)
Transfer price.....	674.27

The gross receipts method—F's profit and transfer price to F:	
F's profit—lesser of 1.83% of F's foreign trading gross receipts (\$18.12) or two times F's profit under the combined taxable income method (\$41.46).....	\$18.12
Transfer price to F: F's foreign trading gross receipts.....	990.00
Less:	
F's expenses.....	295.00
F's profit.....	18.12
Total.....	(313.12)
Transfer price.....	676.88

The section 482 method—Transfer price to F and F's profit:	
Transfer price to F.....	690.00
F's profit:	
F's foreign trading gross receipts.....	990.00
Less:	
F's cost of goods sold.....	690.00
F's expenses.....	295.00
Total.....	(985.00)
F's profit.....	5.00

Example (3). R and F are calendar year taxpayers. R, a domestic manufacturing company, owns all the stock of F, a FSC for the taxable year. During 1985, R produces and sells a product line of export property to F for \$157, a price which can be justified as satisfying the arm's length price standard of section 482. The sale from R to F is made under a written agreement which provides that the transfer price between R and F shall be that price which allocates to F the maximum amount permitted to be received under the transfer pricing rules of section 925. F resells the export property for \$200. R's cost of goods sold attributable to the export property is \$115 so that the combined gross income from the sale of the export property is \$85 (i.e., \$200 minus \$115). R incurs \$18 in direct selling expenses in connection with the sale of the property. R's deductible general and administrative expenses allocable to all gross income are \$120. R's direct selling and its general and administrative expenses were not required to be incurred by F. R's gross

income from sources other than the transaction is \$5,015 resulting in total gross income of R and F (excluding the transfer price paid by F) of \$5,100 (i.e., \$85 plus \$5,015). F incurs \$50 in direct and indirect expenses attributable to resale of the export property. Of those expenses, \$45 relate to activities and functions referred to in section 924 (c), (d) and (e). The maximum profit which F may earn with respect to the product line is \$3.66, computed as follows:

Combined taxable income:	
F's foreign trading gross receipts.....	\$200.00
R's cost of goods sold.....	(115.00)
Combined gross income.....	85.00
Less:	
R's direct selling expenses.....	18.00
R's apportioned G/A expenses: $120 \times 85/5,100$	2.00
F's expenses.....	50.00
Total.....	(70.00)
Combined taxable income.....	15.00

The combined taxable income method—F's profit:	
F's profit—23% of combined taxable income (\$15).....	\$ 3.45

The gross receipts method—F's profit:	
F's profit—lesser of 1.83% of F's foreign trading gross receipts (\$3.66) or two times F's profit under the combined taxable income method (\$6.90).....	\$3.66

The section 482 method—F's profit:	
F's foreign trading gross receipts.....	200.00
Less:	
F's cost of goods sold.....	157.00
F's expenses.....	50.00
Total.....	(207.00)
F's profit (loss).....	(7.00)

Since the gross receipts method results in a greater to F (\$3.66) than does either the combined taxable income method (\$3.45) or the section 482 method (a loss of \$7), and does not exceed twice the profit under the combined taxable income method, F may earn a maximum profit of \$3.66. Accordingly, the transfer price from R to F may be readjusted as long as the transfer price is not readjusted below \$146.34, computed as follows:

Transfer price to F:	
F's foreign trading gross receipts.....	\$ 200.00
Less:	
F's expenses.....	50.00
F's profit.....	3.66

Total.....	(53.66)
Transfer price	146.34

Example (4). R and F are fiscal year May 31 year-end taxpayers. R, a domestic manufacturing company, owns all the stock of F, a FSC for the taxable year. During August of 1987, R produces and sells 100 units of export property A to F under a written agreement which provides that the transfer price between R and F shall be that price which allocates to F the maximum profit permitted to be received under the transfer pricing rules of section 925. Thereafter, the 100 units are resold for export by F for \$950. R's cost of goods sold attributable to the 100 units is \$650. R incurs costs, both direct and indirect, in the amount of \$270 with regard to activities and functions referred to in section 924 (c), (d) and (e) which it was under contract with F to perform for F. R's direct selling expenses are \$40. Those expenses were not required to be incurred by F. For purposes of this example, assume that R has no general and administrative expenses other than those relating to the section 924 (c), (d) and (e) activities and functions. F incurs expenses in the amount of \$290 attributable to the resale which relate to the activities and functions referred to in section 924 (c), (d) and (e). Of that amount, \$270 was paid to R under contract to perform the activities in section 924. The remaining \$20 was paid to independent contractors. R chooses not to apply the section 482 transfer pricing method to determine F's profit on the transaction. F may not earn any income under either the gross receipts (see the special no-loss rule of paragraph (e)(1)(i) of this section) or the combined taxable income administrative pricing methods with respect to resale of the 100 units because there is a combined loss of \$(30) on the transaction, computed as follows:

Combined taxable income:

F's foreign trading gross receipts.....	\$ 950.00
R's cost of goods sold	(650.00)
Combined gross income	300.00
Less:	
R's direct selling expenses.....	40.00
F's expenses	290.00
Total.....	(330.00)
Combined taxable income (loss).....	(30.00)

Under paragraph (e)(1)(i) of this section, F is permitted to recover its expenses attributable to the sale (\$290) even though such recovery results in a loss or increased loss to the related supplier. Accordingly, the transfer price from R to F may be readjusted as long as the transfer price is not readjusted below \$660, computed as follows:

Transfer price to F:	
F's foreign trading gross receipts.....	\$950.00

Less:	
F's expenses	(290.00)
Transfer price	660.00

Example (5). Assume the same facts as in *Example (4)* except that F performs the section 924 (c), (d) and (e) activities and functions and that R chooses to apply the section 482 transfer pricing method. Under the standards of section 482, a transfer price from R to F of \$650 is an arm's length price. Accordingly, the transfer price to F and F's profit on the subsequent resale of product A (\$10) are as follows:

The section 482 method—Transfer price to F and F's profit:	
Transfer price to F.....	\$650.00
F's profit:	
F's foreign trading gross receipts.....	950.00
F's cost of purchases	(650.00)
F's gross income	300.00
Less:	
F's expenses	(290.00)
F's profit.....	10.00

This sale of product A results in a loss to R of \$40 (transfer price of \$650 less R's cost of goods sold of \$650 and direct selling expenses of \$40). Since R chose to use the section 482 transfer pricing method on this loss transaction, under the special no loss rule of paragraph (e)(1)(iii) of this section, the administrative pricing methods of section 925(a) (1) and (2) may not be used for any other sale transactions, or group of sale transactions, during the same year of other products which fall within the same three digit Standard Industrial Classification as product A. F's profit, if any, on these sales must be computed under the section 482 transfer pricing method.

Example (6). R and F are calendar year taxpayers. R, a domestic manufacturing company, owns all the stock of F, a FSC for the taxable year. During 1985, R manufactures 100 units of export property A. R enters into a written agreement with F whereby F is granted a sales franchise with respect to export property A and F will receive commissions with respect to these exports equal to the maximum amount permitted to be received under the administrative pricing rules of section 925 (a) (1) and (2). Thereafter, the 100 units are sold for export by R for \$1,000. The total sales price of \$1,000 was paid by the purchaser to R within 60 days of the sales transaction. The entire \$1,000 would have been foreign trading gross receipts had F been the principal on the sale. R's cost of goods sold attributable to the 100 units is \$650. R's direct selling expenses so attributable are \$50. R's deductible general and administrative expenses, other than those attributable to the section 924 (c), (d) and (e) activities and functions, allocable to all gross income are \$200. Apportionment of those supportive expenses on the basis of gross income does not result in a material

distortion of income and is a reasonable method of apportionment. R's direct selling expenses and the portion of the general and administrative expenses not relating to the activities and functions referred to in section 924 (c), (d) and (e) were not required to be incurred by F. R's gross income from sources other than the transaction is \$17,650 resulting in total gross income of \$18,000 (\$350 plus \$17,650). R and a related person perform on F's behalf the activities and functions referred to in section 924 (c), (d) and (e). In performing these activities, R and the related person incurred expenses, both direct and indirect, of \$200 and \$45, respectively. F pays \$200 to R under contract and \$50 to the related person. The maximum profit which F may earn under the franchise pursuant to the administrative pricing rules is \$18.30, computed as follows:

Combined taxable income:

R's gross receipts from the sale	\$1,000.00
R's cost of goods sold	(650.00)
Combined gross income ..	350.00
Less:	
R's direct selling expenses.....	50.00
F's expenses	250.00

Apportionment of R's general and administrative expenses:

R's total G/A expenses	200.00
Combined gross income	350.00
R's and F's total gross income (foreign and domestic)	18,000.00

Apportionment of G/A expenses:

\$200 × \$350 / \$18,000.....	3.89
Total.....	(303.89)

Combined taxable income	46.11
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As reflected in the above computation, F included on its books \$200 of expenses related to the section 924 activities and performed by R on behalf of F. R incurred \$253.89 of expenses. These expenses were reflected on its books. Under paragraph (b)(2)(ii) of this section, R and F may elect to include all of the expenses related to the export sales on F's books. This will satisfy the requirements of section 925(c) without requiring an allocation of the expenses between R and F. Under this election, as reflected in the following computation, combined taxable income will still be \$46.11 but, as reflected in a later part of this example, the commission due F will be increased by \$253.89:

Combined taxable income:

R's gross receipts from the sale	\$1,000.00
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R's cost of goods sold	(650.00)
Combined gross income	350.00
Less:	
F's expenses	(303.89)
Combined taxable income	46.11

The combined taxable income method—F's profit:	
F's profit—23% of combined taxable income (\$46.11)	\$10.61

The gross receipts method—F's profit:	
F's profit—lesser of 1.83% of R's gross receipts (\$18.30) or two times F's profit under the combined taxable income method (\$21.22)	\$18.30

If the election provided for in paragraph (b)(2)(ii) of this section is not made, F may receive a commission from R in the amount of \$268.30, computed as follows:

F's expenses	\$250.00
F's profit	18.30
F's commission	268.30

This \$268.30 is F's foreign trade income. F's exempt foreign trade income is \$174.98 (\$268.30 × 15/23). F's taxable income is \$6.37, computed as follows:

F's foreign trade income	\$268.30
F's exempt foreign trade income	(174.98)
F's non-exempt foreign trade income	93.32

Less:

F's expenses allocable to non-exempt foreign trade income $250 \times \$93.32 / \268.30	(96.95)
F's taxable income	6.37

Of F's total expenses, \$163.05 (\$250 × \$174.98 / \$268.30) are allocated to F's exempt foreign trade income and are disallowed for purposes of computing F's taxable income.

If R and F make the election provided for in paragraph (b)(2)(ii) of this section, F may receive a commission from R in the amount of \$322.19, computed as follows:

F's expenses	\$303.89
F's profit	18.30
F's commission	322.19

With this election, this \$322.19 is F's foreign trade income. F's exempt foreign trade income is \$210.12 (\$322.19 × 15/23). F's taxable income is still \$6.37, computed as follows:

F's foreign trade income	\$322.19
F's exempt foreign trade income	(210.12)

F's non-exempt foreign trade income	112.07
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Less:

F's expenses allocable to non-exempt foreign trade income $303.89 \times \$112.07 / \322.19	(105.70)
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F's taxable income	6.37
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Of F's total expenses, \$198.19 (\$303.89 × \$210.12 / \$322.19) are allocated to F's exempt foreign trade income and are disallowed for purposes of computing F's taxable income.

Example (7). Assume the same facts as in *Example (6)* except that R's direct selling expenses are \$60. The profit which F may earn under the franchise pursuant to the administrative pricing rules is \$16.62, computed as follows:

Combined taxable income:	
R's gross receipts from the sale	\$1,000.00
R's cost of goods sold	(650.00)
Combined gross income	350.00

Less:

R's direct selling expenses	60.00
R's apportioned G/A expenses	3.89
F's expenses	250.00
	(313.89)

Combined taxable income	36.11
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The combined taxable income method—F's profit:	
F's profit—23% of combined taxable income (\$36.11)	8.31

The gross receipts method—F's profit:	
F's profit—lesser of 1.83% of R's gross receipts (\$ 18.30) or two times F's profit under the combined taxable income method (\$16.62)	16.62

F may receive a commission from R in the amount of \$266.62, computed as follows:

F's expenses	\$250.00
F's profit	16.62
F's commission	266.62

If the election provided for in paragraph (b)(2)(ii) of this section is made by R and F, the profit which F may earn under the franchise pursuant to the administrative pricing rules will remain at \$16.62 but will be computed as follows:

Combined taxable income:	
R's gross receipts from the sale	\$1,000.00
R's cost of goods sold	(650.00)
Combined gross income	350.00

Less: F's expenses	(313.89)
Combined taxable income	36.11

The combined taxable income method—F's profit:	
F's profit—23% of combined taxable income (\$36.11)	8.31

The gross receipts method—F's profit:	
F's profit—lesser of 1.83% of R's gross receipts (\$18.30) or two times F's profit under the combined taxable income method (\$16.62)	16.62

F may receive a commission from R in the amount of \$330.51, computed as follows:	
F's expenses	313.89
F's profit	16.62
F's commission	330.51

As illustrated by *Example (8)*, F's exempt taxable income and taxable income will be the same regardless of which method is used to compute F's commission.

Example (8). Assume the same facts as in *Example (6)* except that F's expenses are \$300. With this assumption, there is a combined loss of \$(3.89) on the transaction under the full costing combined taxable income method, computed as follows:

Combined taxable income:	
R's gross receipts from the sale	\$1,000.00
R's cost of goods sold	(650.00)
Combined gross income	350.00

Less:

R's direct selling expenses	50.00
R's apportioned G/A expenses	3.89
F's expenses	300.00
	(353.89)

Combined taxable income (loss)	(3.89)
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Since there is a combined loss, F will not have a profit under the full costing combined taxable income method. However, for purposes of this example, it is assumed that under the marginal costing rules of § 1.925(b)-1T the maximum combined taxable income is \$75 and the overall profit percentage limitation is 30. Accordingly, F's profit would be \$6.90 (23% of \$30) under the marginal costing rules. F's profit under the gross receipts method will be \$13.80 (1.83% of \$1,000 limited by section 925(d) to two times the profit determined under marginal costing). The commission F may receive from R is \$313.80. Had all of the expenses been reflected on F's books pursuant to the election of paragraph (b)(2)(ii) of this section, F's commission would have been \$367.69.

Example (9). Assume the same facts as in *Example (6)* except that F's expenses are \$300 and that the transaction occurred in 1987. F

will not earn a profit under the sales franchise pursuant to the administrative pricing rules. This is shown by the following computation:

Combined taxable income:	
R's gross receipts from the sale ..	\$1,000.00
R's cost of goods sold.....	(650.00)
Combined gross income.....	350.00
Less:	
R's direct selling expenses	50.00
R's apportioned G/A expenses.....	3.89
F's expenses.....	300.00
	(353.89)
Combined taxable income (loss)	(3.89)

F will not have a profit under the full costing combined taxable income method since there is a combined loss of \$(3.89). Also, F will not have a profit under the gross receipts method due to section 925(d) and the special no loss rule of paragraph (e)(1)(i) of this section. In addition, F will not have a profit under the marginal costing rules because the profit may not exceed full costing combined taxable income, see § 1.925 (b)-1T(b)(4). Although F may not earn a profit, it is entitled to recoup its expenses. Therefore, the commission F may receive from R is \$300.00. R will bear the entire loss. Had all of the expenses been reflected on F's books pursuant to the election of paragraph (b)(2)(ii) of this section, F's commission would have been \$353.89.

Example (10). Assume the same facts as in *Example (6)* except that R receives total payment of the sale price of \$1,000 on the 96th day after delivery, well beyond the 60 day period in which payment must be made to avoid recharacterization of part of the contract price as carrying charges. Therefore, the contract price of \$1,000 includes \$10 of carrying charges, assuming a discount rate of 10%. See § 1.927(d)-1 (a) (Q & A2) for computation method for determining amount of carrying charges. This \$10 of carrying charges is R's income. The profit which F may earn under the franchise pursuant to the administrative pricing rules is \$16.66, computed as follows (the election of paragraph (b)(2)(ii) of this section is not made by R and F):

Combined taxable income:	
R's gross receipts from the sale ..	\$990.00
R's cost of goods sold.....	(650.00)
Combined gross income.....	340.00
Less:	
R's direct selling expenses	50.00
R's apportioned G/A expenses: $200 \times 340 / 18,000$..	3.78
F's expenses.....	250.00
Total	(303.78)
Combined taxable income.....	36.22

The combined taxable income method— F's profit: F's profit— 23% of combined taxable income (\$36.22) \$8.33

The gross receipts method—F's profit: F's profit—lesser of 1.83% of R's gross receipts (\$18.12) or two times F's profit under the combined taxable income method (\$16.66) \$16.66

F may receive a commission from R in the amount of \$266.66, computed as follows:
 F's expenses..... \$250.00
 F's profit..... 16.66
 F's commission..... 266.66

Example (11). Assume the same facts as in *Example (6)*. In addition, assume that R also manufactures products K, L, M, N, and P all of which are export property as defined in section 927(a). Product K is military property as defined in section 923(a)(5) and § 1.923-1T(b)(3)(ii). Assume further that products A, L, and P are included within product line X and that products K, L, M, and N are included within product line W. R has entered into a written agreement with F under which F is granted a sales franchise with respect to exporting the products. Under this agreement, F will receive commissions with respect to those exports equal to the maximum amount permitted to be received under the administrative pricing rules. The table set forth below details F's foreign trading gross receipts, R's cost of goods sold and R's and F's expenses allocable and apportioned under § 1.861-8 to the sale of products A, L, M, N, and P. For purposes of this example, it is assumed that R does not incur any general

and administrative expenses. Because of the special grouping rule of paragraph (c)(8)(ii) of this section, product L may be included for purposes of the administrative pricing rules in only one product line, at the option of R. Also for these purposes, product K, which is military property, may not be grouped with products L, M, and N. See paragraph (c)(8)(iv) of this section. Under these facts, F will have profits under the franchise agreement from the sale of products A, L, M, N, and P and may receive commissions from R relating to the sale of those products, assuming the election of paragraph (b)(2)(ii) of this section is not made, in the following amounts:

	Profit	F's Expenses	Commissions
Product Line X (products A and P).....	\$36.34	\$490.00	\$526.34
Product Line W (products L, M, and N).....	\$40.48	\$421.00	\$461.48

On the sale of product K, R received gross receipts of \$150. R's cost of goods sold was \$130. R's and F's expenses allocable to product K totaled \$10 (\$7 of R's expenses and \$3 of F's). Under the gross receipts method, F earned a profit of \$2.75 (1.83% of \$150) and \$2.30 under the combined taxable income method. F may receive a commission, assuming the election of paragraph (b)(2)(ii) of this section is made by R and F, from R in the amount of \$12.75, computed as follows:

F's expenses	\$10.00
F's profit.....	2.75
F's commission	<u>\$12.75</u>

	Product A	Product L	Product M	Product N	Product P	Total
Product Line X						
Combined Taxable Income						
R's GR From sale	\$1,000				\$1,000	\$2,000
R's cost of goods sold	(650)				(650)	(1,300)
Combined gross income	350				350	700
Less:						
R's expenses.....	50				81	131
F's expenses.....	250				240	490
Total.....	(300)				(321)	(621)
Combined taxable income (loss)	\$50				\$29	\$79
23% of CTI.....	\$11.50				\$6.67	\$18.17
1.83% of GR from sale.....	\$18.30				\$13.34	\$36.34
Product Line W						
Combined Taxable Income						
R's GR from sale		\$1,000	\$625	\$1,800		\$3,425
R's cost of goods sold		(650)	(445)	(1,600)		(2,695)
Combined gross income		350	180	200		730
Less:						
R's expenses.....		81	70	70		221
F's expenses.....		230	60	131		421
Total.....		(311)	(130)	(201)		(642)
Combined taxable income (loss)		\$39	\$50	\$1		\$88
23% of CTI.....		\$8.97	\$11.50	\$0		\$20.24

	Product A	Product L	Product M	Product N	Product P	Total
1.83% of GR From sale.....		\$17.94	\$11.44	\$0		\$40.48

Example (12). R and F are calendar year taxpayers. R owns all the stock of F, an FSC for the taxable year. During 1985, R purchases 100 units of export property A from B, an unrelated domestic manufacturing company for \$850. R's direct selling expenses so attributable are \$20. R enters into a written agreement with F whereby F is granted a sales franchise with respect to export product A and F will receive commissions with respect to these exports equal to the maximum amount permitted to be received under the administrative pricing rules of section 925. Thereafter, the 100 units are sold for export by R for \$1,050. R factors the trade receivable to unrelated person X for \$1,000. Under § 1.924(a)-1T(g)(7), total gross receipts for purposes of computing R's and F's combined taxable income is \$1,000 (total receipts (\$1,050) less the discount (\$50)). This \$1,000 would have been foreign trading gross receipts had F been the principal on the sale. For purposes of this example, it is assumed that R did not incur any general and administrative expenses. F incurs expenses in the amount of \$110, all of which were performed by R under contract to F. The profit which F may earn under the franchise pursuant to the administrative pricing rules is \$9.20 computed as follows:

Combined taxable income:	
R's gross receipts from the sale.....	\$1,000.00
R's cost of goods sold.....	(850.00)
	(150.00)
Less:	
R's direct selling expenses.....	20.00
F's expenses.....	110.00
Total.....	130.00
Combined taxable income.....	\$20.00
The combined taxable income method—F's profit:	
F's profit—23% of combined taxable income (\$20).....	\$4.60

The gross receipts method—F's profit:	
F's profit—lesser of 1.83% of R's gross receipts (\$18.30) or two times F's profit under the combined taxable income, method (\$9.20).....	\$9.20

F may receive a commission from R in the amount of \$119.20, computed as follows (the election of § 1.925(a)-1T(b)(2)(ii) has not been made):	
F's expenses.....	\$110.00
F's profit.....	9.20
F's commission.....	\$119.20

Example (13). R and F are calendar year taxpayers. R, a domestic manufacturing company, owns all the stock of F, an FSC for the taxable year. During March 1985, R manufactures office equipment, export property within the definition of section 927(a)(1), which it leases on April 1, 1985, to F for a term of 1 year at a monthly rental of \$1,000, a rent which satisfies the standard of arm's length rental under section 482. F subleases the product on April 1, 1985, for a term of 1 year at a monthly rental of \$1,200. R's cost for the product leased is \$40,000. R's other deductible expenses attributable to the product are \$200, all of which are incurred in 1985. Those expenses were not incurred under contract to F. F's expenses attributable to sublease of the export property are \$1,150, all of which are incurred in 1985 directly by F. R depreciates the property on a straight line basis, using a half-year convention, assuming a 10 year recovery period (see section 168(f)(2)(C), § 1.48-1(g)). The profit which F may earn with respect to the transaction is \$1,483.50 for 1985 and \$600 for 1986, computed as follows:

Computation for 1985	
Combined taxable income:	
F's sublease rental receipts for year (\$1,200 x 9 months).....	\$10,800.00

Less:	
R's depreciation (((\$40,000 x 1/10) x 9/12).....	3,000.00
R's expenses.....	200.00
F's expense.....	1,150.00
Total.....	(4,350.00)
Combined taxable income.....	6,450.00
The combined taxable income method—F's profit:	
F's profit—23% of combined taxable income (\$6,450).....	\$1,483.50

The gross receipts method—F's profit:	
F's profit—lesser of 1.83% of F's foreign trading gross receipts (\$197.64) or two times F's profit under the combined taxable income method (\$2,967).....	\$197.64

The section 482 method—F's profit:	
F's sublease rental receipts for year.....	\$10,800.00
Less:	
F's lease rental payments for year.....	9,000.00
F's expenses.....	1,150.00
Total.....	(10,150.00)
F's profit.....	650.00

Since the combined taxable income method results in greater profit to F (\$1,483.50) than does either the gross receipts method (\$197.64) or the section 482 method (\$650), F may earn a profit of \$1,483.50 for 1985. Accordingly, the monthly rental payable by F to R for 1985 may be readjusted as long as the monthly rental payable is not readjusted below \$907.39, computed as follows:

Monthly rental payable by F to R for 1985:	
F's sublease rental receipts for year.....	\$10,800.00
Less:	
F's expenses.....	1,150.00
F's profit.....	1,483.50
Total.....	(2,633.50)
Rental payable for 1985.....	8,166.50
Rental payable each month (\$8,166.50/9 months).....	
	\$907.39

Computation for 1986

Combined taxable income:	
F's sublease rental receipts for year (\$1,200 x 3 months).....	\$3,600.00
Less:	
R's depreciation (((\$40,000 x 1/10) x 3/12).....	(1,000.00)
Combined taxable income.....	2,600.00

The combined taxable income method—F's profit:	
F's profit—23% of combined taxable income (\$2,600).....	598.00

The gross receipts method—F's profit:	
F's profit—lesser of 1.83% of F's foreign trading gross receipts (\$3,600) or two times F's profit under the combined taxable income method (\$1,196).....	65.88

The section 482 method—F's profit:	
F's sublease rental receipts for year.....	\$3,600.00
Less:	
F's lease rental payments for year.....	(3,000.00)
F's profit.....	600.00

Since the section 482 method results in a greater profit to F (\$600) than does either the combined taxable income method (\$598) or the gross receipts method (\$65.88), F may earn a profit of \$600 for 1986. Accordingly, the monthly rental payable by F to R for 1986 may be readjusted as long as the monthly rental payable is not readjusted below \$1,000, computed as follows:

Monthly rental payable by F to R for 1986:

F's sublease rental receipts for year	\$3,600.00
Less:	
F's profit	(600.00)
Rental payable for 1986	3,000.00
Rental payable for each month (\$3,000/3 months)	1,000.00

(g) *Effective date.* The provisions of this section and § 1.925 (b)-1T apply with respect to taxable year ending after December 31, 1984, except that a corporation may not be a FSC for any taxable year beginning before January 1, 1985.

§ 1.925(b)-1T Temporary regulations; marginal costing rules.

(a) *In general.* This section prescribes the marginal costing rules authorized by section 925(b)(2). If under paragraph (c)(1) of this section a FSC is treated for its taxable year as seeking to establish or maintain a foreign market for sales of an item, product, or product line of export property (as defined in § 1.927(a)-1T) from which foreign trading gross receipts (as defined in § 1.924(a)-1T) are derived, the marginal costing rules prescribed in paragraph (b) of this section may be applied at the related supplier's election to compute combined taxable income of the FSC and related supplier derived from those sales. (Any further reference to a FSC in this section shall include a small FSC unless indicated otherwise.) The combined taxable income determined under these marginal costing rules may be used to determine whether the "twice the amount determined under the combined taxable income method" limitation for the 1.83% of gross receipts test of section 925(d) has been met.

For FSC taxable years beginning after December 31, 1986, if the marginal costing rules are used to determine the section 925(d) limitation, the FSC may not earn more than 100% of full costing combined taxable income determined under the full costing combined taxable income method of § 1.925(a)-1T(c) (3) and (6). The marginal costing rules may be applied even if the related supplier does not manufacture, produce, grow, or extract the export property sold. The marginal costing rules do not apply to sales of export property which in the hands of a purchaser related under section 954(d)(3) to the seller give rise to foreign base company sales income as described in section 954(d) unless, for the purchaser's year in which it resells the export property, section 954(b)(3)(A)

is applicable or that income is under the exceptions in section 954(b)(4). In addition, the marginal costing rules do not apply to leases of property or to the performances of any services even if they are related and subsidiary services (as defined in § 1.924(a)-1T(d) and § 1.925(a)-1T(b)(2)(iii)(C)).

(b) *Marginal costing rules.*—(1) *In general.* Marginal costing is a method under which only direct production costs of producing a particular item, product, or product line are taken into account for purposes of computing the combined taxable income of the FSC and its related supplier under section 925(a)(2). The costs to be taken into account are the related supplier's direct material and labor costs (as defined in § 1.471-11(b)(2)(i)). Costs which are incurred by the FSC and which are not taken into account in computing combined taxable income are deductible by the FSC only to the extent of the FSC's non-foreign trade income. If the related supplier is not the manufacturer or producer of the export property that is sold, the related supplier's purchase price shall be taken into account.

(2) *Overall profit percentage limitation.* Under marginal costing, the combined taxable income of the FSC and its related supplier may not exceed the overall profit percentage (determined under paragraph (c)(2) of this section) multiplied by the FSC's foreign trading gross receipts if the FSC is the principal on the sale (or the related supplier's gross receipts if the FSC is a commission agent) from the sale of export property.

(3) *Grouping of transactions.* (i) In general, for purposes of this section, an item, product, or product line is the item or group consisting of the product or product line pursuant to § 1.925(a)-1T(c)(8) used by the taxpayer for purposes of applying the full costing combined taxable income method of § 1.925(a)-1T(c) (3) and (6).

(ii) However, for purposes of determining the overall profit percentage under paragraph (c)(2) of this section, any product or product line grouping permissible under § 1.925(a)-1T(c)(8) may be used at the annual choice of the FSC even though it may not be the same item or grouping referred to in subdivision (i) of this paragraph as long as the grouping chosen for determining the overall profit percentage is at least as broad as the grouping referred to in the above subdivision (i) of this paragraph. A product may be included for this purpose, however, in only one product group even though under the grouping rules it would otherwise fall in more

than one group. Thus, the marginal costing rules will not apply with respect to any regrouping if the regrouping does not include any product (or products) that was included in the group for purposes of the full costing method.

(4) *Application of limitation on FSC income ("no loss" rules).* The marginal costing rules of this section will not apply if there is a combined loss of the related supplier and the FSC determined in accordance with paragraph (b)(1) of this section. In addition, for FSC taxable years beginning after December 31, 1986, the profit determined under the marginal costing method may be allowed to the FSC only to the extent it does not exceed the FSC's and the related supplier's full costing combined taxable income determined under the full costing combined taxable income method of § 1.925(a)-1T(c) (3) and (6). This rule prevents pricing at a loss to the related supplier. If either of these "no loss" rules apply, the related supplier may nonetheless charge a transfer price or pay a commission in an amount that will allow the FSC to recover an amount not in excess of its full costs, if any, even if to do so would create or increase a loss in the related supplier. The effect of these no-loss rules and of the overall profit percentage limitation of paragraph (c)(2) of this section is that the FSC's profit under these marginal costing rules is limited to the lesser of the following:

(i) 23% of maximum combined taxable income determined under the marginal costing rules,

(ii) 23% of the overall profit percentage limitation, or

(iii) For FSC taxable years beginning after December 31, 1986, 100% of the full costing combined taxable income determined under the full costing combined taxable income method of § 1.925(a)-1T(c) (3) and (6).

(c) *Definitions.*—(1) *Establishing or maintaining a foreign market.* An FSC shall be treated for its taxable year as seeking to establish or maintain a foreign market with respect to sales of an item, product, or product line of export property from which foreign trading gross receipts are derived if the combined taxable income computed under paragraph (b) of this section is greater than the full costing combined taxable income computed under the full costing combined taxable income method of § 1.925(a)-1T(c) (3) and (6).

(2) *Overall profit percentage.* (i) For purposes of this section, the overall profit percentage for a taxable year of the FSC for a product or product line is the percentage which—

(A) The combined taxable income of the FSC and its related supplier from the

sale of export property plus all other taxable income of its related supplier from all sales (domestic and foreign) of such product or product line during the FSC's taxable year, computed under the full costing method, is of

(B) The total gross receipts (determined under § 1.927(b)-1T) of the FSC and related supplier from all sales of the product or product line.

(ii) At the annual option of the related supplier, the overall profit percentage for the FSC's taxable year for all products and product lines may be determined by aggregating the amounts described in subdivisions (i) (A) and (B) of this paragraph of the FSC, and all domestic members of the controlled group (as defined in section 927(d)(4) and § 1.924(a)-1T(h)) of which the FSC is a member, for the FSC's taxable year and for taxable years of the members ending with or within the FSC's taxable year.

(iii) For purposes of determining the amounts in subdivisions (i) and (ii) of this paragraph, a sale of property between an FSC and its related supplier or between domestic members of the controlled group shall be taken into account only during the FSC's taxable year (or taxable year of the member ending within the FSC's taxable year) during which the property is ultimately sold to a person which is not related to the FSC or if related, is a foreign person that is not an FSC.

(3) *Full costing method.* For purposes of section 925 and this section, the term "full costing combined taxable income method" is the method for determining full costing combined taxable income set forth in § 1.925(a)-1T(c) (3) and (6).

(d) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). R and F are calendar year taxpayers. R, a domestic manufacturing company, owns all the stock of F, an FSC for the taxable year. During 1985, R produces and sells 100 units of export property A to F under a written agreement which provides that the transfer price between R and F shall be that price which allocates to F the maximum profit permitted to be received under the administrative pricing rules of section 925(a) (1) and (2). Thereafter, the 100 units are resold for export by F for \$950. R's cost of goods sold attributable to the 100 units is \$650 consisting in part of \$400 of direct materials and \$200 of direct labor. R incurs selling expenses directly attributable to the sale in the amount of \$100. Those expenses were not required to be incurred by F. For purposes of this example, it is assumed that R does not have general and administrative expenses that are not definitely allocable to any item of gross income. F's expenses attributable to the resale of the 100 units are \$120. For purposes of this example, R and F have gross receipts of \$4,000 from all

domestic and foreign sales. R's total cost of goods sold and total expenses relating to its foreign and domestic sales are \$2,730 and \$450, respectively. Under full costing, the combined taxable income will be \$80, computed as follows:

Combined taxable income—full costing:	
F's foreign trading gross receipts	\$950.00
R's cost of goods sold	(650.00)
Combined gross income	300.00
Less:	
R's direct selling expenses	100.00
F's expenses	120.00
Total	(220.00)
Combined taxable income (loss)	80.00

F's profit under the full costing combined taxable income method is \$18.40, i.e., 23% of full costing combined taxable income (\$80). F's profit under the gross receipts method will be \$17.39, i.e., 1.83% of F's foreign trading gross receipts (\$950). However, under the marginal costing rules, F would have a profit attributable to the export sale in the amount of \$38.24, i.e., 23% of combined taxable income as determined under the marginal costing rules (23% of \$166.25). As shown by the computation below, the combined taxable income under marginal costing is limited to the overall profit percentage limitation (\$166.25) since that amount is less than the maximum combined taxable income amount (\$350):

Maximum combined taxable income (determined under paragraph (b)(1) of this section):	
F's foreign trading gross receipts	\$950.00
Less:	
R's direct materials	400.00
R's direct labor	200.00
Total	(600.00)
Maximum combined total income	350.00

Overall profit percentage limitation calculation (determined under paragraph (c)(2) of this section):	
Gross receipts of R and F from all domestic and foreign sales	\$4,000.00
R's cost of goods sold	(2,730.00)
Combined gross income	1,270.00
Less:	
R's expenses	450.00
F's expenses	120.00
Total	(570.00)

Total taxable income from all sales computed on a full costing method	700.00
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Overall profit percentage (total taxable income (\$700) divided by total gross receipts (\$4,000)	17.5%
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Overall profit percentage limitation Overall profit percentage times F's foreign trading gross receipts (17.5% times \$950.00)	\$166.25
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The transfer price from R to F may be set at \$791.76, computed as follows:

Transfer price to F:	
F's foreign trading gross receipts	\$950.00
Less:	
F's expenses	120.00
F's profit	38.24
Total	(158.24)
Transfer price	791.76

Example (2). Assume the same facts as in *Example (1)* except that F's expenses are \$170. Under full costing, the combined taxable income will be \$30, computed as follows:

Combined taxable income—full costing:	
F's foreign trading gross receipts	\$950.00
R's cost of goods sold	(650.00)
Combined gross income	300.00
Less:	
R's expenses	100.00
F's expenses	170.00
Total	(270.00)
Combined taxable income (loss)	30.00

F's profit under the full costing combined taxable income method is \$6.90, i.e., 23% of combined taxable income, \$30. Under the marginal costing rules, F may earn a profit attributable to the export sale in the amount of \$35.51, i.e., 23% of combined taxable income as determined under the marginal costing rules (23% of \$154.38). Had the transaction occurred in 1987, F would have had a profit attributable to the export sale under these marginal costing rules of only \$30, i.e., 23% of combined taxable income as determined under the marginal costing rules (23% of \$154.38) limited, for FSC taxable years beginning after December 31, 1986, to combined taxable income determined under full costing (\$30), see paragraph (b)(4) of this section. F's profit under the gross receipts method will be \$17.39 i.e., 1.83% of F's foreign

trading gross receipts (\$950). The computations are as follows:

<i>Maximum combined taxable income</i> (determined under paragraph (b)(1) of this section):	
F's foreign trading gross receipts	\$950.00
Less:	
R's direct materials	400.00
R's direct labor	200.00
Total	(600.00)
Maximum combined taxable income	350.00

Overall profit percentage limitation calculation (determined under paragraph (c)(2) of this section):

Gross receipts of R and F from all domestic and foreign sales	4,000.00
R's cost of goods sold	(2,730.00)
Combined gross income	1,270.00
Less:	
R's expenses	450.00
F's expenses	170.00
Total	(620.00)
Total taxable income from all sales computed on a full costing method	650.00

Overall profit percentage (total taxable income (\$650) divided by total gross receipts (\$4,000))

16.25%

Overall profit percentage limitation Overall profit percentage times F's foreign trading gross receipts (16.25% times \$950.00) ..

154.38

The transfer price from R to F may be set at \$744.49, computed as follows:

<i>Transfer price to F:</i>	
F's foreign trading gross receipts	950.00
Less:	
F's expenses	170.00
F's profit	35.51
Total	(205.51)
Transfer price	744.49

Example (3). Assume the same facts as in *Example (1)* except that the transaction occurs in 1987 and that F incurs expenses in the amount of \$250. Since a \$50 combined loss, as computed below, is incurred, F will not have any profit under either the full costing combined taxable income method, the gross receipts method or the marginal costing rules:

<i>Combined taxable income—full costing:</i>	
F's foreign trading gross receipts	\$950.00
R's cost of goods sold	(650.00)
Combined gross income	300.00
Less:	
R's expenses	100.00
F's expenses	250.00
Total	(350.00)
Combined taxable income (loss)	(50.00)

The transfer price to R may be set at \$700 so that F may recover its expenses.

Example (4). R and F are calendar year taxpayers. R, a domestic manufacturing company, owns all the stock of F, a FSC for the taxable year. During 1985, R manufactures export property A. R enters into a written agreement with F whereby F will receive a commission with respect to sales of export property A by R which result in gross receipts to R which would have been foreign trading gross receipts had F and not R been the principal on the sale. F will receive commissions with respect to such export sales equal to the maximum amount permitted to be received under the transfer pricing rules of section 925. The maximum commission may be earned by F under these marginal costing rules. In this example, R received \$950 from the sale of export property A. R's cost of goods sold for that property was \$620. R incurred direct selling expenses of \$20. Also, it is assumed that R incurred total general and administrative expenses, in addition to those incurred relating to its contract to perform on behalf of F the functions and activities of section 924 (c), (d) and (e), of \$50. R incurred direct and indirect expenses of \$130 in performing those functions and activities on behalf of F. During 1985, R had gross receipts from all domestic and foreign sales of \$3,500, total cost of goods sold and total expenses relating to the domestic and foreign sales of \$1,600 and \$259, respectively. The election provided for in § 1.925(a)-1T(b)(2)(ii) was not made by R and F.

<i>Combined taxable income—full costing:</i>	
R's gross receipts from the sale of the export property	\$950.00
R's cost of goods sold	(620.00)
Combined gross income	330.00
Less:	
R's direct selling expenses	20.00
F's expenses	130.00

<i>Apportionment of R's general and administrative expenses:</i>	
R's total G/A expenses	\$50
Combined gross income	330
R's total gross income	1,900
Apportionment of G/A expenses \$50 x \$330/\$1,900	8.68
Total	(158.68)
Combined taxable income (loss)	171.32

<i>Maximum combined taxable income</i> (determined under paragraph (b)(1) of this section):	
R's gross receipts from the sale of the export property	\$950.00
Less:	
R's direct materials	450.00
R's direct labor	100.00
Total	(550.00)
Maximum combined taxable income	400.00

<i>Overall profit percentage limitation calculation</i> (determined under paragraph (c)(2) of this section):	
Gross receipts of R from all domestic and foreign sales	3,500.00
R's cost of goods sold	(1,600.00)
Combined gross income	1,900.00
Less:	
R's total expenses	259.00
F's total expenses	130.00
Total	(450.00)
Total taxable income from all sales computed on a full costing method	1,511.00

Overall profit percentage (total taxable income (\$1,511) divided by total gross receipts (\$3,500))

43.17%

Overall profit percentage limitation Overall profit percentage times R's gross receipts from the sale of export property (i.e., 43.17% times \$950.00)

410.12

Since the overall profit percentage limitation (\$410.12) is greater than the maximum combined taxable income (\$400), combined taxable income under marginal costing and for purposes of computing F's commission is limited to \$400. Under these

marginal costing rules, F will have a profit attributable to the sale of \$92, i.e., 23% of combined taxable income as determined under the marginal costing rules (23% of \$400). Accordingly, the commission F receives from R is \$222, i.e., F's expenses (\$130) plus F's profit (\$92).

Example (5). Assume the same facts as in *Example (4)*, except that R's gross receipts from the sale of export property which would have been foreign trading gross receipts had F been the principal on the sale are \$1,050 and gross receipts from all sales, domestic and foreign, remain at \$3,500. For purposes of applying the combined taxable income method, R and F may compute their combined taxable income attributable to the product line of export property under the marginal costing rules as follows:

<i>Combined taxable income—full costing:</i>	
R's gross receipts from the sale of export property.....	\$1,050.00
R's cost of goods sold.....	(620.00)
Combined gross income.....	430.00
Less:	
R's direct selling expenses.....	20.00
F's expenses.....	130.00
Apportionment of R's G/A expenses \$50 x \$430/\$1,900.....	11.32
Total.....	(161.32)
Combined taxable income (loss).....	268.68

<i>Maximum combined taxable income (determined under paragraph (b)(1) of this section):</i>	
R's gross receipts from the sale of export property.....	\$1,050.00
Less:	
R's direct materials.....	450.00
R's direct labor.....	100.00
Total.....	(550.00)
Maximum combined taxable income.....	500.00
Overall profit percentage (see example (4)).....	43.17%

<i>Overall profit percentage limitation (determined under paragraph (c)(2) of this section) (R's gross receipts from sale (\$1,050.00) times the overall profit percentage (43.17%)).....</i>	
	453.29

Since maximum combined taxable income (\$500) is greater than the overall profit percentage limitation (\$453.29), combined taxable income under marginal costing and for purposes of computing F's commission is limited to \$453.29. Under these marginal costing rules, F will have a profit attributable to the sales of \$104.26, i.e., 23% of combined taxable income (23% of \$453.29). Accordingly,

the commission F receives from R is \$234.26, i.e., F's expenses (\$130) plus F's profit (\$104.26).

Example (6). Assume the same facts as in *Example (5)*, except that F has expenses of \$140 and R's cost of goods sold for the export sale was \$900. R does not incur any direct selling expenses. Since cost of goods sold has increased by \$280, R's total gross income has been reduced from \$1,900 to \$1,620. For purposes of applying the combined taxable income method, R and F may compute their combined taxable income under the marginal costing rules as follows:

<i>Combined taxable income—full costing:</i>	
R's gross receipts from the sale of export property.....	\$1,050.00
R's cost of goods sold.....	(900.00)
Combined gross income.....	150.00
Less:	
F's expenses.....	140.00
Apportionment of R's G/A expenses \$50 x \$150/\$1,620.....	4.63
Total.....	(144.63)
Combined taxable income (loss).....	5.37

<i>Maximum combined taxable income (determined under paragraph (b)(1) of this section):</i>	
R's gross receipts from the sale of export property.....	\$1,050.00
Less:	
R's direct materials.....	630.00
R's direct labor.....	200.00
Total.....	(830.00)
Maximum combined taxable income.....	220.00

<i>Overall profit percentage limitation calculation (determined under paragraph (c)(2) of this section):</i>	
Gross receipts of R and F from all domestic and foreign sales.....	\$3,500.00
R's cost of goods sold.....	(1,880.00)
Combined gross income.....	1,620.00
Less:	
R's total expenses.....	259.00
F's total expenses.....	140.00
Total.....	(399.00)
Total taxable income from all sales computed on a full costing method.....	\$1,221.00
Overall profit percentage (total taxable income (\$1,221) divided by total gross receipts (\$3,500)).....	34.89%

Overall profit percentage limitation—overall profit percentage times R's gross receipts from the sale of export property (i.e., 34.89% times \$1,050).....	\$366.35
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Since the overall profit percentage limitation (\$366.35) is greater than the maximum combined taxable income (\$220), combined taxable income under marginal costing and for purposes of computing F's commission is limited to \$220. Under these marginal costing rules, F will have a profit attributable to the sale of \$50.60, i.e., 23% of combined taxable income as determined under the marginal costing rules (23% of \$220). If the transaction occurred in 1987, F's profit would be limited, however, by paragraph (b)(4) of this section to full costing combined taxable income of \$5.37.

§ 1.926(a)-1T Temporary regulations; distributions to shareholders.

(a) *Treatment of distributions.* Any distribution by an FSC (or former FSC) to its shareholder with respect to its stock will be includible in the shareholder's gross income in accordance with the provisions of section 301. (Any further reference to an FSC in this section shall include a small FSC unless indicated otherwise.) See section 245(c) for treatment of distributions to domestic corporate shareholders of the FSC. If earnings and profits of an FSC (or former FSC) attributable to foreign trade income are distributed to a shareholder which is a foreign person (or a nonresident alien individual), that distribution shall be treated as United States source income which is effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States. For this purpose, distributions to a foreign partnership, foreign trust, foreign estate or other foreign entities that would be treated as pass-through entities under U.S. law shall be treated as made directly to the partners of beneficiaries in proportion to their respective interest in the entity.

(b) *Order of distribution—(1) In general.* Any actual distribution to a shareholder by a FSC (or former FSC) which is made out of earnings and profits shall be treated as made in the following order, to the extent thereof—

- (i) Out of earnings and profits attributable to exempt foreign trade income determined solely because of operation of section 923(a)(4),
- (ii) Out of earnings and profits attributable to other exempt foreign trade income,

(iii) Out of earnings and profits attributable to non-exempt foreign trade income determined under either of the administrative pricing methods of section 925(a) (1) or (2).

(iv) Out of earnings and profits attributable to section 923(a)(2) non-exempt income, and

(v) Out of other earnings and profits.

(2) *Determination of earnings and profits.* For purposes of this section, the earnings and profits of a FSC (or former FSC) shall be the earnings and profits computed in accordance with the rules, where applicable, prescribed in § 1.964-1 (relating to determination of the earnings and profits of a foreign corporation) other than subsections (d) and (e) of that section.

(c) *Definition of "former FSC".* Under section 926(c), the term "former FSC" refers to a corporation which is not a FSC for a taxable year but which was a FSC for a prior taxable year. However, a corporation is not a former FSC for a taxable year unless such corporation has, at the beginning of such taxable year, earnings and profits attributable to foreign trade income. A corporation which is a former FSC for a taxable year is a former FSC for all purposes of the Code.

(d) *Personal holding company income—(1) Treatment of dividends.* Any amount includible in a shareholder's gross income as a dividend with respect to the stock of a FSC (or former FSC) under paragraph (a) of this section shall be treated as a dividend for all purposes of the Code, except that that part of the dividend attributable to foreign trade income, other than an amount attributable to section 923(a)(2) non-exempt income, shall not be considered in applying the personal holding company and foreign personal holding company provisions (sections 541 through 547 and 551 through 558, respectively).

(2) *Look through option.* With regard to distributions from a FSC (or former FSC) which are not treated as personal holding company income under paragraph (d)(1) of this section, the shareholder may, however, treat any amount of that distribution as an item of income described under section 543 (or section 553) (for example, rents) if it establishes to the satisfaction of the Commissioner that such amount is attributable to earnings and profits of the FSC derived from such item of income. For example, distributions from a FSC relating to section 923(a)(2) non-exempt income will be treated as dividends for purposes of the personal holding company provisions of sections 541 through 547 unless the look through option is elected. Under this option, if

earnings and profits out of which those distributions are made are attributable to the lease of export property, the FSC shareholder may treat the distribution for purposes of the personal holding company provisions as rents rather than as dividends. This may be beneficial to the shareholder because rents are not considered under section 543(a)(2) as personal holding company income, if in general, rents constitute 50% or more of the shareholder's adjusted ordinary gross income.

(e) *Sale of stock if section 1248 applies.* For purposes of section 1248, the earnings and profits of a FSC (or former FSC) shall not include earnings and profits attributable to foreign trade income.

§ 1.927(a)-1T Temporary Regulations; Definition of export property.

(a) *General rule.* Under section 927 (a), except as otherwise provided with respect to excluded property in paragraphs (f), (g) and (h) of this section and with respect to certain short supply property in paragraph (i) of this section, export property is property in the hands of any person (whether or not an FSC) (any further reference to an FSC in this section shall include a small FSC unless indicated otherwise)—

(1) *U.S. manufactured, produced, grown or extracted.* Manufactured, produced, grown, or extracted in the United States by any person or persons other than an FSC (see paragraph (c) of this section).

(2) *Foreign use, consumption or disposition.* Held primarily for sale, lease or rental in the ordinary course of a trade or business by an FSC to an FSC or to any other person for direct use, consumption, or disposition outside the United States (see paragraph (d) of this section).

(3) *Foreign content.* Not more than 50 percent of the fair market value of which is attributable to articles imported into the United States (see paragraph (e) of this section), and

(4) *Non-related FSC purchaser or user.* Which is not sold, leased or rented by an FSC, or with an FSC as commission agent, to another FSC which is a member of the same controlled group (as defined in section 927(d)(4) and § 1.924(a)-1T(h)) as the FSC.

(b) *Services.* For purposes of this section, services (including the written communication of services in any form) are not export property. Whether an item is property or services shall be determined on the basis of the facts and circumstances attending the development and disposition of the item. Thus, for example, the preparation of a map of a particular construction site

would constitute services and not export property, but standard maps prepared for sale to customers generally would not constitute services and would be export property if the requirements of this section were otherwise met.

(c) *Manufacture, production, growth, or extraction of property—(1) By a person other than a FSC.* Export property may be manufactured, produced, grown, or extracted in the United States by any person, provided that that person does not qualify as a FSC. Property held by a FSC which was manufactured, produced, grown or extracted by it at a time when it did not qualify as a FSC is not export property of the FSC. Property which sustains further manufacture, production or processing outside the United States prior to sale or lease by a person but after manufacture, production, processing or extraction in the United States will be considered as manufactured, produced, grown or extracted in the United States by that person only if the property is reimported into the United States for further manufacturing, production or processing prior to final export sale. In order to be considered export property, the property manufactured, produced, grown or extracted in the United States must satisfy all of the provisions of section 927(a) and this section.

(2) *Manufactured, produced or processed.* For purposes of this section, property which is sold or leased by a person is considered to be manufactured, produced or processed by that person or by another person pursuant to a contract with that person if the property is manufactured or produced, as defined in § 1.954-3(a)(4). For purposes of this section, however, in determining if the 20% conversion test of § 1.954-3(a)(4)(iii) has been met, conversion costs include assembly and packaging costs but do not include the value of parts provided pursuant to a services contract as described in § 1.924(a)-1T(d)(3). In addition, for purposes of this section, the 20% conversion test is extended and applied to the export property's adjusted basis rather than to its cost of goods sold if it is leased or held for lease.

(d) *Foreign use, consumption or disposition—(1) In general.* (i) Under paragraph (a)(2) of this section, export property must be held primarily for the purpose of sale, lease or rental in the ordinary course of a trade or business, by a FSC to a FSC or to any other person, and the sale or lease must be for direct use, consumption, or disposition outside the United States. Thus, property cannot qualify as export

property unless it is sold or leased for direct use, consumption, or disposition outside the United States. Property is sold or leased for direct use, consumption, or disposition outside the United States if the sale or lease satisfies the destination test described in subdivision (2) of this paragraph, the proof of compliance requirements described in subdivision (3) of this paragraph, and the use outside the United States test described in subdivision (4) of this paragraph.

(ii) *Factors not taken into account.* In determining whether property which is sold or leased to a FSC is sold or leased for direct use, consumption, or disposition outside the United States, the fact that the acquiring FSC holds the property in inventory or for lease prior to the time it sells or leases it for direct use, consumption, or disposition outside the United States will not affect the characterization of the property as export property. Fungible export property must be physically segregated from non-export property at all times after purchase by or rental by a FSC or after the start of the commission relationship between the FSC and related supplier with regard to the export property. Non-fungible export property need not be physically segregated from non-export property.

(2) *Destination test.* (i) For purposes of paragraph (d)(1) of this section, the destination test of this paragraph is satisfied with respect to property sold or leased by a seller or lessor only if it is delivered by the seller or lessor (or an agent of the seller or lessor) regardless of the F.O.B. point or the place at which title passes or risk of loss shifts from the seller or lessor—

(A) Within the United States to a carrier or freight forwarder for ultimate delivery outside the United States to a purchaser or lessee (or to a subsequent purchaser or sublessee);

(B) Within the United States to a purchaser or lessee, if the property is ultimately delivered outside the United States (including delivery to a carrier or freight forwarder for delivery outside the United States) by the purchaser or lessee (or a subsequent purchaser or sublessee) within 1 year after the sale or lease;

(C) Within or outside the United States to a purchaser or lessee which, at the time of the sale or lease, is a FSC or an interest charge DISC and is not a member of the same controlled group as the seller or lessor;

(D) From the United States to the purchaser or lessee (or a subsequent purchaser or sublessee) at a point outside the United States by means of the seller's or lessor's own ship, aircraft,

or other delivery vehicle, owned, leased, or chartered by the seller or lessor;

(E) Outside the United States to a purchaser or lessee from a warehouse, storage facility, or assembly site located outside the United States, if the property was previously shipped by the seller or lessor from the United States; or

(F) Outside the United States to a purchaser or lessee if the property was previously shipped by the seller or lessor from the United States and if the property is located outside the United States pursuant to a prior lease by the seller or lessor, and either (1) the prior lease terminated at the expiration of its term (or by the action of the prior lessee acting alone), (2) the sale occurred or the term of the subsequent lease began after the time at which the term of the prior lease would have expired, or (3) the lessee under the subsequent lease is not a related person with respect to the lessor and the prior lease was terminated by the action of the lessor (acting alone or together with the lessee).

(ii) For purposes of this paragraph (d)(2) (other than paragraphs (d)(2)(i) (C) and (F)(3)), any relationship between the seller or lessor and any purchaser, subsequent purchaser, lessee, or sublessee is immaterial.

(iii) In no event is the destination test of this paragraph (d)(2) satisfied with respect to property which is subject to any use (other than a resale or sublease), manufacture, assembly, or other processing (other than packaging) by any person between the time of the sale or lease by such seller or lessor and the delivery or ultimate delivery outside the United States described in this paragraph (d)(2).

(iv) If property is located outside the United States at the time it is purchased by a person or leased by a person as lessee, such property may be export property in the hands of such purchaser or lessee only if it is imported into the United States prior to its further sale or lease (including a sublease) outside the United States. Paragraphs (a)(3) and (e) of this section (relating to the 50 percent foreign content test) are applicable in determining whether such property is export property. Thus, for example, if such property is not subjected to manufacturing or production (as defined in paragraph (c) of this section) within the United States after such importation, it does not qualify as export property.

(3) *Proof of compliance with destination test—(i) Delivery outside the United States.* For purposes of paragraph (d)(2) of this section (other than subdivision (i)(C) thereof), a seller or lessor shall establish ultimate delivery, use, or consumption of

property outside the United States by providing—

(A) A facsimile or carbon copy of the export bill of lading issued by the carrier who delivers the property;

(B) A certificate of an agent or representative of the carrier disclosing delivery of the property outside the United States;

(C) A facsimile or carbon copy of the certificate of lading for the property executed by a customs officer of the country to which the property is delivered;

(D) If that country has no customs administration, a written statement by the person to whom delivery outside the United States was made;

(E) A facsimile or carbon copy of the Shipper's Export Declaration, a monthly shipper's summary declaration filed with the Bureau of Customs, or a magnetic tape filed in lieu of the Shipper's Export Declaration, covering the property; or

(F) Any other proof (including evidence as to the nature of the property or the nature of the transaction) which establishes to the satisfaction of the Commissioner that the property was ultimately delivered, or directly sold, or directly consumed outside the United States within 1 year after the sale or lease.

(ii) The requirements of subdivision (i) (A), (B), (C), or (E) of this paragraph will be considered satisfied even though the name of the ultimate consignee and the price paid for the goods is marked out provided that, in the case of a Shipper's Export Declaration or other document listed in subdivision (i)(E) of this paragraph or a document such as an export bill of lading, such document still indicates the country in which delivery to the ultimate consignee is to be made and, in the case of a certificate of an agent or representative of the carrier, that the document indicates that the property was delivered outside the United States.

(iii) A seller or lessor shall also establish the meeting of the requirement of paragraph (d)(2)(i) of this section (other than subdivision (i)(C) thereof), that the property was delivered outside the United States without further use, manufacture, assembly, or other processing within the United States.

(iv) For purposes of paragraph (d)(2)(i)(C) of this section, a purchaser or lessee of property is deemed to qualify as an FSC or an interest charge DISC for its taxable year if the seller or lessor obtains from the purchaser or lessee a copy of the purchaser's or lessee's election to be treated as an FSC or

interest charge DISC together with the purchaser's or lessee's sworn statement that the election has been timely filed with the Internal Revenue Service Center. The copy of the election and the sworn statement of the purchaser or lessee must be received by the seller or lessor within 6 months after the sale or lease. A purchaser or lessee is not treated as an FSC or interest charge DISC with respect to a sale or lease during a taxable year for which the purchaser or lessee does not qualify as a FSC or interest charge DISC if the seller or lessor does not believe or if a reasonable person would not believe at the time the sale or lease is made that the purchaser or lessee will qualify as an FSC or interest charge DISC for the taxable year.

(v) If a seller or lessor fails to provide proof of compliance with the destination test as required by this paragraph (d)(3), the property sold or leased is not export property.

(4) *Sales and leases of property for ultimate use in the United States*—(i) *In general.* For purposes of paragraph (d)(1) of this section, the use test in this paragraph (d)(4) is satisfied with respect to property which—

(A) Under subdivision (4)(ii) through (iv) of this paragraph is not sold for ultimate use in the United States, or

(B) Under subdivision (4)(v) of this paragraph is leased for ultimate use outside the United States.

(ii) *Sales of property for ultimate use in the United States.* For purposes of subdivision (4)(i) of this paragraph, a purchaser of property (including components, as defined in subdivision (4)(vii) of this paragraph) is deemed to use the property ultimately in the United States if any of the following conditions exist:

(A) The purchaser is a related party with respect to the seller and the purchaser ultimately uses the property, or a second product into which the property is incorporated as a component, in the United States.

(B) At the time of the sale, there is an agreement or understanding that the property, or a second product into which the property is incorporated as a component, will be ultimately used by the purchaser in the United States.

(C) At the time of the sale, a reasonable person would have believed that the property or the second product would be ultimately used by the purchaser in the United States unless, in the case of a sale of components, the fair market value of the components at the time of delivery to the purchaser constitutes less than 20 percent of the fair market value of the second product into which the components are

incorporated (determined at the time of completion of the production, manufacture, or assembly of the second product).

For purposes of subdivision (4)(ii)(B) of this paragraph, there is an agreement or understanding that property will ultimately be used in the United States if, for example, a component is sold abroad under an express agreement with the foreign purchaser that the component is to be incorporated into a product to be sold back to the United States. As a further example, there would also be such an agreement or understanding if the foreign purchaser indicated at the time of the sale or previously that the component is to be incorporated into a product which is designed principally for the United States market. However, such an agreement or understanding does not result from the mere fact that a second product, into which components exported from the United States have been incorporated and which is sold on the world market, is sold in substantial quantities in the United States.

(iii) *Use in the United States.* For purposes of subdivision (4)(ii) of this paragraph, property (including components incorporated into a second product) is or would be ultimately used in the United States by the purchaser if, at any time within 3 years after the purchase of such property or components, either the property is or the components (or the second product into which the components are incorporated) are resold by the purchaser for use by a subsequent purchaser within the United States or the purchaser or subsequent purchaser fails, for any period of 365 consecutive days, to use the property or second product predominantly outside the United States (as defined in subdivision (4)(vi) of this paragraph).

(iv) *Sales to retailers.* For purposes of subdivision (4)(ii)(C) of this paragraph, property sold to any person whose principal business consists of selling from inventory to retail customers at retail outlets outside the United States will be considered to be used predominantly outside the United States.

(v) *Leases of property for ultimate use outside the United States.* For purposes of subdivision (4)(i) of this paragraph, a lessee of property is deemed to use property ultimately outside the United States during a taxable year of the lessor if the property is used predominantly outside the United States (as defined in subdivision (4)(vi) of this paragraph) by the lessee during the portion of the lessor's taxable year which is included within the term of the lease. A determination as to whether the

ultimate use of leased property satisfies the requirements of this subdivision is made for each taxable year of the lessor. Thus, leased property may be used predominantly outside the United States for a taxable year of the lessor (and thus, constitute export property if the remaining requirements of this section are met) even if the property is not used predominantly outside the United States in earlier taxable years or later taxable years of the lessor.

(vi) *Predominant use outside the United States.* For purposes of this paragraph (d)(4), property is used predominantly outside the United States for any period if, during that period, the property is located outside the United States more than 50 percent of the time. An aircraft, railroad rolling stock, vessel, motor vehicle, container, or other property used for transportation purposes is deemed to be used predominantly outside the United States for any period if, during that period, either the property is located outside the United States more than 50 percent of the time or more than 50 percent of the miles traversed in the use of the property are traversed outside the United States. However, property is deemed to be within the United States at all times during which it is engaged in transport between any two points within the United States, except where the transport constitutes uninterrupted international air transportation within the meaning of section 4262(c)(3) and the regulations under that section (relating to tax on air transportation of persons). An orbiting satellite is deemed to be located outside the United States. For purposes of applying section 4262(c)(3) to this subdivision, the term "United States" includes the Commonwealth of Puerto Rico.

(vii) *Component.* For purposes of this paragraph (d)(4), a component is property which is (or is reasonably expected to be) incorporated into a second product by the purchaser of such component by means of production, manufacture, or assembly.

(e) *Foreign content of property*—(1) *The 50 percent test.* Under paragraph (a)(3) of this section, no more than 50 percent of the fair market value of export property may be attributable to the fair market value of articles which were imported into the United States. For purposes of this paragraph (e), articles imported into the United States are referred to as "foreign content." The fair market value of the foreign content of export property is computed in accordance with paragraph (e)(4) of this section. The fair market value of export property which is sold to a person who

is not a related person with respect to the seller is the sale price for such property (not including interest, finance or carrying charges, or similar charges.)

(2) *Application of 50 percent test.* The 50 percent test is applied on an item-by-item basis. If, however, a person sells or leases a large volume of substantially identical export property in a taxable year and if all of that property contains substantially identical foreign content in substantially the same proportion, the person may determine the portion of foreign content contained in that property on an aggregate basis.

(3) *Parts and services.* If, at the time property is sold or leased the seller or lessor agrees to furnish parts pursuant to a services contract (as provided in § 1.924(a)-1T(d)(3)) and the price for the parts is not separately stated, the 50 percent test is applied on an aggregate basis to the property and parts. If the price for the parts is separately stated, the 50 percent test is applied separately to the property and to the parts.

(4) *Computation of foreign content—*

(i) *Valuation.* For purposes of applying the 50 percent test, it is necessary to determine the fair market value of all articles which constitutes foreign content of the property being tested to determine if it is export property. The fair market value of the imported articles is determined as of the time the articles are imported into the United States.

(A) *General rule.* Except as provided in paragraph (e)(4)(i)(B), the fair market value of the imported articles which constitutes foreign content is their appraised value, as determined under section 403 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with their importation. The appraised value of the articles is the full dutiable value of the articles, determined, however, without regard to any special provision in the United States tariff laws which would result in a lower dutiable value.

(B) *Special election.* If all or a portion of the imported article was originally manufactured, produced, grown, or extracted in the United States, the taxpayer may elect to determine the fair market value of the imported articles which constitutes foreign content under the provisions of this paragraph (e)(4)(i)(B) if the property is subjected to manufacturing or production (as defined in paragraph (c) of this section) within the United States after importation. A taxpayer making the election under this paragraph may determine the fair market value of the imported articles which constitutes foreign content to be the fair market value of the imported articles reduced by the fair market value at the time of the initial export of the

portion of the property that was manufactured, produced, grown, or extracted in the United States. The taxpayer must establish the fair market value of the imported articles and of the portion of the property manufactured, produced, grown, or extracted in the United States at the time of the initial export in accordance with subdivision (4)(ii)(B) of this paragraph.

(ii) *Evidence of fair market value—*

(A) *General rule.* For purposes of subdivision (4)(i)(A) of this paragraph, the fair market value of the imported articles is their appraised value, which may be evidenced by the customs invoice issued on the importation of such articles into the United States. If the holder of the articles is not the importer (or a related person with respect to the importer), the appraised value of the articles may be evidenced by a certificate based upon information contained in the customs invoice and furnished to the holder by the person from whom the articles (or property incorporating the articles) were purchased. If a customs invoice or certificate described in the preceding sentences is not available to a person purchasing property, the person shall establish that no more than 50 percent of the fair market value of such property is attributable to the fair market value of articles which were imported into the United States.

(B) *Special election.* For purposes of the special election set forth in subdivision (4)(i)(B) of this paragraph, if the initial export is made to a controlled person within the meaning of section 482, the fair market value of the imported articles and of the portion of the articles that are manufactured, produced, grown, or extracted within the United States shall be established by the taxpayer in accordance with the rules under section 482 and the regulations under that section. If the initial export is not made to a controlled person, the fair market value must be established by the taxpayer under the facts and circumstances.

(iii) *Interchangeable component articles.* (A) If identical or similar component articles can be incorporated interchangeably into property and a person acquires component articles that are imported into the United States and other component articles that are not imported into the United States, the determination whether imported component articles were incorporated in the property that is exported from the United States shall be made on a substitution basis as in the case of the rules relating to drawback accounts under the customs laws. See section

313(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(b)).

(B) The provisions of subdivision (4)(iii)(A) of this paragraph may be illustrated by the following example:

Example. Assume that a manufacturer produces a total of 20,000 electronic devices. The manufacturer exports 5,000 of the devices and subsequently sells 11,000 of the devices to a FSC which exports the 11,000 devices. The major single component article in each device is a tube which represents 60 percent of the fair market value of the device at the time the device is sold by the manufacturer. The manufacturer imports 8,000 of the tubes and produces the remaining 12,000 tubes. For purposes of this subdivision, in accordance with the substitution principle used in the customs drawback laws, the 5,000 devices exported by the manufacturer are each treated as containing an imported tube because the devices were exported prior to the sale to the FSC. The remaining 3,000 imported tubes are treated as being contained in the first 3,000 devices purchased and exported by the FSC. Thus, since the 50 percent test is not met with respect to the first 3,000 devices purchased and exported by the FSC, those devices are not export property. The remaining 8,000 devices purchased and exported by the FSC are treated as containing tubes produced in the United States, and those devices are export property (if they otherwise meet the requirements of this section).

(f) *Excluded property—*(1) *In general.* Notwithstanding any other provision of this section, the following property is not export property—

(i) Property described in subdivision (2) of this paragraph (relating to property leased to a member of controlled group),

(ii) Property described in subdivision (3) of this paragraph (relating to certain types of intangible property),

(iii) Products described in paragraph (g) of this section (relating to oil and gas products), and

(iv) Products described in paragraph (h) of this section (relating to certain export controlled products).

(2) *Property leased to member of controlled group—*(i) *In general.* Property leased to a person (whether or not a FSC) which is a member of the same controlled group as the lessor constitutes export property for any period of time only if during the period—

(A) The property is held for sublease, or is subleased, by the person to a third person for the ultimate use of the third person;

(B) The third person is not a member of the same controlled group; and

(C) The property is used predominantly outside the United States by the third person.

(ii) *Predominant use.* The provisions of paragraph (d)(4)(vi) of this section

apply in determining under subdivision (2)(i)(C) of this paragraph whether the property is used predominantly outside the United States by the third person.

(iii) *Leasing rule.* For purposes of this paragraph (f)(2), leased property is deemed to be ultimately used by a member of the same controlled group as the lessor if such property is leased to a person which is not a member of the controlled group but which subleases the property to a person which is a member of the controlled group. Thus, for example, if X, a FSC for the taxable year, leases a movie film to Y, a foreign corporation which is not a member of the same controlled group as X, and Y then subleases the film to persons which are members of the controlled group for showing to the general public, the film is not export property. On the other hand, if X, a FSC for the taxable year, leases a movie film to Z, a foreign corporation which is a member of the same controlled group as X, and Z then subleases the film to Y, another foreign corporation, which is not a member of the same controlled group for showing to the general public, the film is not disqualified from being export property.

(iv) *Certain copyrights.* With respect to a copyright which is not excluded by subdivision (3) of this paragraph from being export property, the ultimate use of the property is the sale or exhibition of the property to the general public. Thus, if A, a FSC for the taxable year, leases recording tapes to B, a foreign corporation which is a member of the same controlled group as A, and if B makes records from the recording tape and sells the records to C, another foreign corporation, which is not a member of the same controlled group, for sale by C to the general public, the recording tape is not disqualified under this paragraph from being export property, notwithstanding the leasing of the recording tape by A to a member of the same controlled group, since the ultimate use of the tape is the sale of the records (*i.e.*, property produced from the recording tape).

(3) *Intangible property.* Export property does not include any patent, invention, model, design, formula, or process, whether or not patented, or any copyright (other than films, tapes, records, or similar reproductions, for commercial or home use), goodwill, trademark, tradebrand, franchise, or other like property. Although a copyright such as a copyright on a book or computer software does not constitute export property, a copyrighted article (such as a book or standardized, mass marketed computer software) if not accompanied by a right to reproduce for

external use is export property if the requirements of this section are otherwise satisfied. Computer software referred to in the preceding sentence may be on any medium, including, but not limited to, magnetic tape, punched cards, disks, semi-conductor chips and circuit boards. A license of a master recording tape for reproduction outside the United States is not disqualified under this paragraph from being export property.

(g) *Oil and Gas*—(1) *In general.* Under section 927(a)(2)(C), export property does not include oil or gas (or any primary product thereof).

(2) *Primary product from oil or gas.* A primary product from oil or gas is not export property. For purposes of this paragraph—

(i) *Primary product from oil.* The term "primary product from oil" means crude oil and all products derived from the destructive distillation of crude oil, including—

- (A) Volatile products,
- (B) Light oils such as motor fuel and kerosene,
- (C) Distillates such as naphtha,
- (D) Lubricating oils,
- (E) Greases and waxes, and
- (F) Residues such as fuel oil.

For purposes of this paragraph, a product or commodity derived from shale oil which would be a primary product from oil if derived from crude oil is considered a primary product from oil.

(ii) *Primary product from gas.* The term "primary product from gas" means all gas and associated hydrocarbon components from gas wells or oil wells, whether recovered at the lease or upon further processing, including—

- (A) Natural gas,
- (B) Condensates,
- (C) Liquefied petroleum gases such as ethane, propane, and butane, and
- (D) Liquid products such as natural gasoline.

(iii) *Primary products and changing technology.* The primary products from oil or gas described in subdivisions (2)(i) and (ii) of this paragraph and the processes described in those subdivisions are not intended to represent either the only primary products from oil or gas, or the only processes from which primary products may be derived under existing and future technologies. For example, petroleum coke, although not derived from the destructive distillation of crude oil, is a primary product from oil derived from an existing technology.

(iv) *Non-primary products.* For purposes of this paragraph, petrochemicals, medicinal products,

insecticides and alcohols are not considered primary products from oil or gas.

(h) *Export controlled products*—(1) *In general.* Section 927(a)(2)(D) provides that an export controlled product is not export property. A product or commodity may be an export controlled product at one time but not an export controlled product at another time. For purposes of this paragraph, a product or commodity is an "export controlled product" at a particular time if at that time the export of such product or commodity is prohibited or curtailed under section 7(a) of the Export Administration Act of 1979, to effectuate the policy relating to the protection of the domestic economy set forth in paragraph (2)(C) of section 3 of the Export Administration Act of 1979. That policy is to use export controls to the extent necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

(2) *Products considered export controlled products*—(i) *In general.* For purposes of this paragraph, an export controlled product is a product or commodity, which is subject to short supply export controls under 15 CFR Part 377. A product or commodity is considered an export controlled product for the duration of each control period which applies to such product or commodity. A control period of a product or commodity begins on and includes the initial control date (as defined in subdivision (2)(ii) of this paragraph) and ends on and includes the final control date (as defined in subdivision (2)(iii) of this paragraph).

(ii) *Initial control date.* The initial control date of a product or commodity which is subject to short supply export controls is the effective date stated in the regulations to 15 CFR Part 377 which subjects the product or commodity to short supply export controls. If there is no effective date stated in these regulations, the initial control date of the product or commodity will be thirty days after the effective date of the regulations which subject the product or commodity to short supply export controls.

(iii) *Final control date.* The final control date of a product or commodity is the effective date stated in the regulations to 15 CFR Part 377 which removes the product or commodity from short supply export controls. If there is no effective date stated in those regulations, the final control date of the product or commodity is the date which is thirty days after the effective date of

the regulations which remove the product or commodity from short supply export control.

(iv) *Expiration of Export Administration Act.* An initial control date and final control date cannot occur after the expiration date of the Export Administration Act under the authority of which the short supply export controls were issued.

(3) *Effective dates*—(i) *Products controlled on January 1, 1985.* If a product or commodity was subject to short supply export controls on January 1, 1985, this paragraph shall apply to all sales, exchanges, other dispositions, or leases of the product or commodity made after January 1, 1985, by the FSC or by the FSC's related supplier if the FSC is the commission agent on the transaction.

(ii) *Products first controlled after January 1, 1985.* If a product or commodity becomes subject to short supply export controls after January 1, 1985, this paragraph applies to sales, exchanges, other dispositions, or leases of such product or commodity made on or after the initial control date of such product or commodity, and to owning such product or commodity on or after such date.

(iii) *Date of sale, exchange, lease, or other disposition.* For purposes of this paragraph (h)(3), the date of sale, exchange, or other disposition of a product or commodity is the date as of which title to such product or commodity passes. The date of a lease is the date as of which the lessee takes possession of a product or commodity. The accounting method of a person is not determinative of the date of sale, exchange, other disposition, or lease.

(i) *Property in short supply.* If the President determines that the supply of any property which is otherwise export property as defined in this section is insufficient to meet the requirements of the domestic economy, he may by Executive Order designate such property as in short supply. Any property so designated will be treated under section 927(a)(3) as property which is not export property during the period beginning with the date specified in such Executive Order and ending with the date specified in an Executive Order setting forth the President's determination that such property is no longer in short supply.

§ 1.927 (b)-1T Temporary Regulations; Definition of gross receipts.

(a) *General rule.* Under section 927(b), for purposes of sections 921 through 927, the gross receipts of a person for a taxable year are—

(1) *Business income.* The total amounts received or accrued by the person from the sale or lease of property held primarily for sale or lease in the ordinary course of a trade or business, and

(2) *Other income.* Gross income recognized from whatever source derived, such as, for example, from—

(i) The furnishing of services (whether or not related to the sale or lease of property described in subdivision (1) of this paragraph),

(ii) Dividends and interest (including tax exempt interest),

(iii) The sale at a gain of any property not described in subdivision (1) of this paragraph, and

(iv) Commission transactions to the extent described in paragraph (e) of this section.

(b) *Non-gross receipts items.* For purposes of paragraph (a) of this section, gross receipts do not include amounts received or accrued by a person from—

(1) *Loan transactions.* The proceeds of a loan or of the repayment of a loan, or

(2) *Non-taxable transactions.* A receipt of property in a transaction to which section 118 (relating to contribution to capital) or section 1032 (relating to exchange of stock for property) applies.

(c) *Non-reduction of total amounts.* For purposes of paragraph (a) of this section, the total amounts received or accrued by a person are not reduced by costs of goods sold, expenses, losses, a deduction for dividends received, or any other deductible amounts. The total amounts received or accrued by a person are reduced by returns and allowances.

(d) *Method of accounting.* For purposes of paragraph (a) of this section, the total amounts received or accrued by a person shall be determined under the method of accounting used in computing its taxable income. If, for example, a FSC receives advance or installment payments for the sale or lease of property described in paragraph (a)(1) of this section, for the furnishing of services, or which represent recognized gain from the sale of property not described in paragraph (a)(1) of this section, any amount of such advance payments is considered to be gross receipts of the FSC for the taxable year for which such amount is included in the gross income of the FSC.

(e) *Commission transactions*—(1) *In general*—(i) *With a related supplier.* In the case of transactions which give rise to a commission from the FSC's related supplier on the sale or lease of property or the furnishing of services by a principal, the FSC's gross income from all such transactions is the commission

paid or payable to the FSC by the related supplier. The FSC's gross receipts for purposes of computing its profit under the administrative pricing methods of section 925(a) (1) and (2) shall be the gross receipts (other than gross receipts which would not be foreign trading gross receipts had they been received by the FSC) derived by the related supplier from the sale or lease of the property or from the furnishing of services, with respect to which the commissions are derived. Also, in determining whether the 50% test in section 924(a) has been met, the relevant gross receipts are the gross receipts of the related supplier.

(ii) *With an unrelated principal.* In the case of transactions which give rise to a commission from an unrelated principal to a FSC on the sale or lease of property or the furnishing of services by a principal, the amount recognized by the FSC as gross income from all such transactions shall be the commission received from the principal.

(2) *Selective commission arrangements*—(i) *In general.* A commission arrangement between the FSC and its related supplier may provide that the FSC will not be the related supplier's commission agent with respect to sales or leases of export property, or the furnishing of services, which do not result in foreign trading gross receipts. In addition, the commission agreement may provide that the FSC will not be the related supplier's commission agent on transactions which would result in a loss to the related supplier under the transfer pricing rules of section 925(a). In a buy-sell FSC situation, selective commission arrangements are not applicable. Determination of which transactions fall within the selective commission arrangement may be made up to the due date under section 6072(b), including extensions provided for under section 6081, of the FSC's income tax return for the taxable year of the FSC during which a transaction occurs.

(ii) *Example.* The treatment of a selective commission arrangement may be illustrated by the following example:

Example. A calendar year commission FSC ("F") entered into a selective commission arrangement with related supplier RS which provided that F will not be RS's commission agent on transactions which would result in a loss to RS under the transfer pricing rules of section 925(a). During 1987, RS sold three different articles of export property A, B and C, all of which fall within the same three digit Standard Industrial Classification. In July of 1988, while preparing the FSC's 1987 income tax return, RS determined that the sale of export property A resulted in a loss to RS under the section 482 method of section

925(a)(3) and that applying that method to the sales of export property B and C resulted in only a small amount of income to both RS and F. In addition, RS determined that grouping export property B and C, while excluding export property A from the grouping, resulted in the highest profit to F under the combined taxable income administrative pricing method of section 925(a)(2). Using the same grouping, the gross receipts method of section 925(a)(1) would result in a lower profit to F. Under the special no-loss rule of § 1.925(a)-1T(e)(1)(iii), RS would be prohibited from using the combined taxable income administrative pricing method to determine F's profit for the grouping of export property B and C if it used the section 482 method on the sale of export property A. This results because there was a loss to RS on the sale of export property A. Under the selective commission arrangement, RS could exercise its option and exclude the sale of export property A. Since F is no longer deemed to have been operating as RS's commission agent on that sale, the combined taxable income method may be used to compute F's profit on the grouping of the sales of export property B and C.

(f) *Example.* The definition of gross receipts under this section may be illustrated by the following example:

Example. During 1985, M, a related supplier of N, is engaged in the manufacture of machines in the United States. N, a calendar year FSC, is engaged in the sale and lease of such machines in foreign countries. N furnishes services which are related and subsidiary to its sale and lease of those machines. N also acts as a commission agent in foreign countries for Z, an unrelated supplier, with respect to Z's sale of products. N receives dividends on stock owned by it, interest on loans, and proceeds from sales of business assets located outside the United States resulting in recognized gains and losses. N's gross receipts for 1985 are \$3,550, computed on the basis of the additional facts assumed in the table below:

N's sales receipts for machines manufactured by M (without reduction for cost of goods sold and selling expenses).....	\$1,500
N's lease receipts for machines manufactured by M (without reduction for depreciation and leasing expenses).....	500
N's gross income from related and subsidiary services for machines manufactured by M (without reduction for service expenses).....	400
N's sales receipts for products manufactured by Z (without reduction for Z's cost of goods sold, commissions on sales and commission sales expenses).....	550
Dividends received by N.....	150
Interest received by N.....	200
Proceeds received by N representing recognized gain (but not losses) for sales of business assets located outside the United States.....	250

N's gross receipts..... 3,550

§ 1.927(e)-1T Temporary Regulations; Special sourcing rule.

(a) *Source rules for related persons—*
(1) *In general.* If an FSC receives foreign trading gross receipts on the sale of export property which it purchased from a related supplier, the related supplier's foreign source income, if any, resulting from the initial sale of the export property to the FSC may not exceed the amount of income which would have been treated as foreign source income earned by the related person had the analogous DISC pricing rules of section 994 applied to the initial sale. This special rule also applies if the FSC is acting as a commission agent for the related supplier on the sale of export property and the transfer pricing rules are used to determine the commission payable to the FSC.

(2) *Grouping of transactions.* If, for purposes of determining the FSC's profits under the administrative pricing rules, grouping of transactions under § 1.925(a)-1T(c)(8) was elected, the same grouping shall be used for making the determinations under this special sourcing rule.

(3) *Analogous DISC pricing rules.* For purposes of this section—

(i) The DISC gross receipts pricing rule of section 994 (a)(1) is analogous to the gross receipts pricing rule of section 925(a)(1);

(ii) The DISC combined taxable income pricing rule of section 994 (a)(2) is analogous to the combined taxable income pricing rule of section 925 (a)(2); and

(iii) The DISC section 482 pricing rule of section 994 (a)(3) is analogous to the section 482 pricing rule of section 925 (a)(3).

§ 1.927(e)-2T Temporary regulations; effect of boycott participation on FSC and small FSC benefits.

(a) *International boycott factor.* If the FSC (or small FSC) or any member of the FSC's (or small FSC's) controlled group participates in or cooperates with an international boycott within the meaning of section 999, the FSC's (or small FSC's) exempt foreign trade income as determined under section 923 (a) shall be reduced by an amount equal to the product of the FSC's (or small FSC's) exempt foreign trade income multiplied by the international boycott factor determined under section 999. The amount of the reduction will be considered as non-exempt foreign trade income.

(b) *Specifically attributable taxes and income method.* If the taxpayer clearly demonstrates that the income earned for the taxable year is attributable to specific operations, then in lieu of applying the international boycott factor for such taxable year, the amount of the exempt foreign trade income as determined under section 923(a) that will be reduced by this section shall be the amount specifically attributable to the operations in which there was participation in or cooperation with an international boycott under section 999(b)(1). The amount of the reduction will be considered as non-exempt foreign trade income.

§ 1.927-1T [Removed]

Par. 6. Section 1.927-1T is removed and § 1.927(d)-2T is added immediately following § 1.927(d)-1T to read as follows:

§ 1.927(d)-2T Temporary Regulations; Definitions and special rules relating to Foreign Sales Corporation.

(a) *Definition of related supplier.* For purposes of sections 921 through 927 and the regulations under those sections, the term "related supplier" means a related party which directly supplies to a FSC any property or services which the FSC disposes of in a transaction producing foreign trading gross receipts, or a related party which uses the FSC as a commission agent in the disposition of any property or services producing foreign trading gross receipts. A FSC may have different related suppliers with respect to different transactions. If, for example, X owns all the stock of Y, a corporation, and of F, a FSC, and X sells a product to Y which is resold to F, only Y is the related supplier of F. If, however, X sells directly to F and Y also sells directly to F, then, as to the transactions involving direct sales to F, each of X and Y is a related supplier of F.

(b) *Definition of related party.* The term "related party" means a person which is owned or controlled directly or indirectly by the same interests as the FSC within the meaning of section 482 and § 1.482-1(a).

PART 602—[AMENDED]

OMB Control Numbers Under the Paperwork Reduction Act (26 CFR Part 602)

Par. 7. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 8. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.921-3T . . . 1545-0935", "§ 1.923-1T . . . 1545-0935", "§ 1.924(a)-1T . . . 1545-0935", "§ 1.925 (a)-1T . . . 1545-0935", "§ 1.925 (b)-1T . . . 1545-0935", "§ 1.926(a)-1T . . . 1545-0935", "§ 1.927(a)-1T . . . 1545-0935", "§ 1.927(b)-1T . . . 1545-0935", "§ 1.927(d)-2T . . . 1545-0935", "§ 1.927 (e)-1T . . . 1545-0935" and "§ 1.927 (e)-2T . . . 1545-0935".

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved: January 8, 1987.

J. Roger Mentz,
Assistant Secretary of the Treasury.

[FR Doc. 87-4001 Filed 3-2-87; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 1 and 602****Income Tax for Taxable Years Beginning After December 31, 1953; Paperwork Reduction Act; FSC Transfer Pricing Rules, Distributions, Foreign Tax Credit and Other Special Rules for FSC's**

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed Income Tax Regulations relating to rules for application of the foreign sales corporation (FSC) transfer pricing rules, for distributions from a FSC, for treatment of losses of a FSC, for sourcing and classification of a FSC's income, for computation of exempt foreign trade income, for computation of the FSC's and the FSC's United States shareholder's foreign tax credits, for definitions of foreign trading gross receipts, export property and gross receipts, for effect of boycott participation on FSC benefits, and for sourcing a related supplier's income if the transfer pricing rules are used to compute the FSC's profit. In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to these matters. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed before May 4, 1987.

These rules would apply to taxable years beginning after December 31, 1984.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention: CC:LR:T (INTL-153-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Richard Chewning, of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111

Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T (INTL-153-86)) (202-566-6384, not a toll-free call).

SUPPLEMENTARY INFORMATION:**Background**

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new §§ 1.921-3T, 1.923-1T, 1.924(a)-1T, 1.925(a)-1T, 1.925(b)-1T, 1.926(a)-1T, 1.927(a)-1T, 1.927(b)-1T, 1.927(d)-2T, 1.927(e)-1T and 1.927(e)-2T to 26 CFR Part 1. The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR Part 1. For the text of the temporary regulations, see FR Doc. 87-4001 [T.D. 8126] published in the Rules and Regulations portion of this issue of the **Federal Register**.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that these proposed rules are not major rules as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of a proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these collection of information requirements may be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that

persons submitting comments on these requirements to OMB also send copies of those comments to the Internal Revenue Service.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Richard Chewning, of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR 1.861-1 through 1.997-1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Source of income, U.S. investments abroad.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposal of regulations

The temporary regulations, FR Doc. 87-4001 [T.D. 8126], published in the Rules and Regulations portion of this issue of the **Federal Register**, are hereby also proposed as final regulations under sections 921 and 923 through 927 of the Internal Revenue Code of 1954.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87-4002 Filed 3-2-87; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 1 and 602**

(T.D. 8127)

Income Tax; Taxable Years Ending After December 31, 1953; FSC General Rules, Requirements, Definitions, and Special Rules**AGENCY:** Internal Revenue Service, Treasury.**ACTION:** Final regulations.

SUMMARY: This document contains final Income Tax Regulations concerning the general rules regarding the requirements that a corporation must meet to be a foreign sales corporation (FSC) (or a small FSC) and the tax treatment of an FSC (or a small FSC) and the specific rules regarding the requirements for FSC and small FSC status, the methods of electing and terminating FSC status, and the definition of and computation of carrying charges on sales of property by an FSC. These final regulations provide necessary guidance to FSCs and their shareholders with respect to FSC qualification under Title VIII of the Tax Reform Act of 1984 (Foreign Sales Corporations).

DATES: The regulations are applicable for taxable years beginning after December 31, 1984, and are effective after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Richard Chewing of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-6384, not a toll-free call).

SUPPLEMENTARY INFORMATION:
Background

On December 12, 1984, the *Federal Register* published temporary regulations (49 FR 48283) and proposed amendments (49 FR 48322) to the Income Tax Regulations (26 CFR Part 1) under new sections 921, 922 and 927, which were added to the Code by sections 801 and 805 of the Tax Reform Act of 1954 (Pub. L. 98-69, 98 Stat. 985 and 1000). Written comments responding to this notice were received. A public hearing was held on May 13, 1985. After consideration of all comments regarding the proposed amendments, those amendments are adopted by this Treasury decision with revisions in response to those comments. The comments and revisions are discussed below.

Public Comments

The proposed and temporary Income Tax Regulations dealt with general

rules, requirements, definitions and special rules for FSCs in a question and answer format. Most of the comments received did not question the correctness of the responses to the questions presented but rather requested that the responses be more specific. With respect to only one issue, the time when carrying charges will begin to accrue, was there major disagreement expressed concerning the rule stated in the proposed and temporary regulations.

The proposed and temporary regulations provide that carrying charges will not accrue if the sales price of export property, lease payment for lease of export property or services income from rendering of qualified services is fully paid before the end of the normal payment period, which was set at 60 days from the date of the sale or exchange of property under the contract or from the date services under the contract are completed. If not fully paid by the end of the normal payment period, carrying charges would accrue during the period beginning with the first day after the end of the normal payment period and ending with the date on which payment is made. A special rule was included to lessen the administrative burden of this carrying charges provision. This special rule provides that the FSC may elect to treat the final date of payment stated in the contract as the date on which payment is made if the contracts for all transactions completed during the FSC's taxable year require that payment be received within the normal payment period and if no more than 20% of the transactions for which final payment is received in the taxable year involve payment after the end of the 60 day normal payment period (the 20% election).

Many commentators suggested that in export sale transactions, the normal payment period exceeds the 60 day period provided for in the regulations. Those commentators suggested that the normal payment period should be set at 6 months. Notwithstanding the comments, it was decided not to extend the normal payment period beyond 60 days.

Several commentators suggested that the 20% election does not eliminate the administrative burdens associated with the carrying charges provisions. They suggested that various other methods of computing carrying charges would be more administratively beneficial. Some commentators suggested that the invoice date or the end of the month date should be used as the date the normal payment period begins. These suggestions were rejected because in effect they would

extend the normal payment period beyond 60 days. Other commentators requested various methods of computing carrying charges that do not require matching the particular receivable to the date of payment. One suggested method is to calculate the carrying charges on the average number of days that receivables are outstanding during the year. For example, if receivables attributable to foreign trading gross receipts on the average are paid within 90 days, this method would compute carrying charges based on the 30 days in excess of the normal payment period that the average receivables are outstanding. This method has been allowed as an alternative to the computation method of § 1.927(d)-1(a)A-2(ii)(A). However, if this method is elected, it must be used to compute carrying charges for all transactions during the year. Separate computations of carrying charges must be made for transactions involving related persons and unrelated persons. In addition, separate computations must be made for each of the five types of receipts listed in paragraphs (1) through (5) of section 924(a).

In addition the 20% election was modified to provide that for taxable years beginning after March 3, 1987, the 20% test will refer to only the foreign trading gross receipts of the transactions. For prior years, the 20% test will refer to either the foreign trading gross receipts of the transactions or to the number of transactions. Also, the 20% election was modified to provide that the grouping rules applicable to determination of the FSC's profit under the administrative pricing rules of section 925 may be applied. Accordingly, transactions may be grouped into product or product-line grouping to determine whether 20% or less of the foreign trading gross receipts (or number of transactions, if applicable) of the grouped transactions involve payment after the end of the normal payment period.

Also, these regulations at § 1.922-1(h) clarify what constitutes the FSC's principal foreign office, and what activities have to be performed by the FSC at that office. See § 1.922-1(i) with respect to what documents, and when these documents, have to be maintained at the FSC's principal foreign office. See § 1.922-1(i) with respect to what information must be included in the documents that are to be maintained at the principal foreign office.

With regard to the commentators' request for more specific guidance on many of the answers given in the proposed and temporary regulations, the

following sections have been deleted from this regulation: Section 1.921-2T(a)(Q&A-2) (effect of FSC election); (f) (Q&A-9) and (Q&A-10) definition of foreign trading gross receipts; (g)(Q&A-11) (definition of export property); (h)(Q&A-12) (administrative pricing) and (Q&A-13) (exempt foreign trade income); (i)(Q&A-14) (treatment of exempt foreign trade income) and (Q&A-15) (allocation of deductions); (j)(Q&A-16) (non-exempt foreign trade income); (l)(Q&A-19) (foreign tax credit); (m)(Q&A-20) (distributions of a FSC) and (n)(Q&A-21) (Subpart F application). Topics covered by those questions and answers are covered in greater detail in the temporary regulations relating to FSC transfer pricing rules, distributions, foreign tax credit and other special rules for FSCs (INTL-154-86).

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b), the Secretary of the Treasury has certified that the requirements of the Regulatory Flexibility Act do not apply to this regulation since it will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required and has not been prepared.

Executive Order 12291

The Commissioner of Internal Revenue has determined that these regulations are not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required and has not been prepared.

Paperwork Reduction Act

These regulations were submitted to the Office of Management and Budget for review under the Paperwork Reduction Act and approved under OMB number 1545-0884.

Drafting Information

The principal author of these regulations is Richard Chewning of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.861-1 through 1.997-1

Income taxes, Aliens, Exports, DISC, FSC, Foreign investments in U.S., Foreign tax credit, Sources of income, United States investments abroad.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

Income Tax Regulations (26 CFR Part 1)

Paragraph 1. The authority for Part 1 is amended by removing the authorities for §§ 1.921-2T, 1.922-1T, 1.927(d)-1T, and 1.927(f)-1T and adding the following:

Authority: 26 U.S.C. 7805. * * * Section 1.927 (d)-1 also issued under 26 U.S.C. 927(d)(1)(B). * * * Section 1.927 (f)-1 also issued under 26 U.S.C. 927 (f). * * *

§§ 1.921-2T, 1.922-1T, 1.927(d)-1T and 1.927(f)-1T [Removed]

Par. 2. Sections 1.921-2T, 1.922-1T, 1.927(d)-1T, and 1.927 (f)-1T are removed.

Par. 3. New §§ 1.921-2, 1.922-1, 1.927(d)-1, and 1.927(f)-1 are added at the appropriate places to read as follows:

§ 1.921-2 Foreign Sales Corporation—General Rules.

(a) *Definition of a FSC and the Effect of a FSC Election.*

Q-1. What is the definition of a Foreign Sales Corporation (hereinafter referred to as a "FSC" (All references to FSCs include small FSCs unless indicated otherwise)?

A-1. As defined in section 922(a), an FSC must satisfy the following eight requirements.

(i) The FSC must be a corporation organized or created under the laws of a foreign country that meets the requirements of section 927(e)(3) (a "qualifying foreign country") or a U.S. possession other than Puerto Rico (an "eligible possession"). See Q&As 3, 4, and 5 of § 1.922-1.

(ii) A FSC may not have more than 25 shareholders at any time during the taxable year. See Q&A 6 of § 1.922-1.

(iii) A FSC may not have any preferred stock outstanding during the taxable year. See Q&As 7 and 8 of § 1.922-1.

(iv) A FSC must maintain an office outside of the United States in a qualifying foreign country or an eligible possession and maintain a set of permanent books of account (including invoices or summaries of invoices) at such office. See Q&As 9, 10, 11, 12, 13, 14, and 15 of § 1.922-1.

(v) A FSC must maintain within the United States the records required under section 6001. See Q&A 16 of § 1.922-1.

(vi) The FSC must have a board of directors which includes at least one individual who is not a resident of the United States at all times during the taxable year. See Q&As 17, 18, 19, 20, and 21 of § 1.922-1.

(vii) A FSC may not be a member, at any time during the taxable year, of any controlled group of corporations of which an interest charge DISC is a member. See Q&A 2 of this section and Q&A 13, of § 1.921-1T(b)(13).

(viii) A FSC must have made an election under section 927(f)(1) which is in effect for the taxable year. See Q&A 1 of § 1.921-1T(b)(1) and § 1.927(f)-1.

In addition, under section 441(h), the taxable year of a FSC must conform to the taxable year of its principal shareholder. See Q&A 4 of § 1.921-1T(b)(4).

Q-2. Does the reference to a DISC under section 922(a)(1)(F) which provides that a FSC cannot be a member, at any time during the taxable year, of any controlled group of corporations of which a DISC is a member refer solely to an interest charge DISC?

A-2. Yes.

(b) *Small FSC.*

Q-3. What is a small FSC?

A-3. A small FSC is a Foreign Sales Corporation which meets the requirements of section 922(a)(1) enumerated in Q&A 1 of this section as well as the requirements of section 922(b). Section 922(b) requires that a small FSC make a separate election to be treated as a small FSC. See Q&A 1 of § 1.921-1T(b) and § 1.927(f)-1. In addition, section 922(b) requires that the small FSC not be a member, at any time during the taxable year, of a controlled group of corporations which includes a FSC unless such FSC is a small FSC.

Q-4. What is the effect of an election as a small FSC?

A-4. Under section 924(b)(2), a small FSC need not meet the foreign management and economic processes tests of section 924(b)(1) in order to have foreign trading gross receipts. However, in determining the exempt foreign trade income of a small FSC, any foreign trading gross receipts for the taxable year in excess of \$5 million are not taken into account. If the foreign trading gross receipts of a small FSC for the taxable year exceed the \$5 million limitation, the FSC may select the gross receipts to which the limitation is allocated. In order to use the administrative pricing rules under

section 925(a), a small FSC must satisfy the activities test under section 925(c). In addition, under section 441(h), the taxable year of a small FSC must conform to the taxable year of its principal shareholder (defined in Q&A 4 of § 1.921-1T(b)(4) as the shareholder with the highest percentage of its voting power).

Q-5. What is the effect on a small FSC (or FSC) ("target") if it is acquired, directly or indirectly, by a corporation if that acquiring corporation ("acquiring"), or a member of the acquiring corporation's controlled group, is a FSC (or small FSC)?

A-5. Unless the corporations in the controlled group elect to terminate the FSC (or small FSC) election of the acquiring corporation, the target's small FSC's (or FSC's) taxable year and election will terminate as of the day preceding the date the target small FSC and acquiring FSC became members of the same controlled group. The target small FSC will receive FSC benefits for the period prior to termination, but the \$5 million small FSC limitation will be reduced to the amount which bears the same ratio to the \$5 million as the number of days in the short year created by the termination bears to 365. The due date of the income tax return for the short taxable year created by this provision will be the date prescribed by section 6072(b), including extensions, starting with the last day of the short taxable year. If the short taxable year created by this provision ends prior to March 3, 1987, the filing date of the tax return for the short taxable year will be automatically extended until the earlier of May 18, 1987 or the date under section 6072 (b) assuming a short taxable year had not been created by these regulations.

(c) *Comparison of FSC to DISC.*

Q-6. How does a FSC differ from a DISC?

A-6. A DISC is a domestic corporation which is not itself taxable while a FSC must be created or organized under the laws of a jurisdiction which is outside of the United States (including certain U.S. possessions) and may be taxable on its income except for its exempt foreign trade income. The DISC provisions enable a shareholder to obtain a partial deferral of tax on income from export sales and certain services, if 95 percent of its receipts and assets are export related. The FSC provisions contain no assets test, but a portion of income for export sales and certain services is exempt from U.S. taxes if the FSC satisfies certain foreign presence, foreign management, and foreign economic processes tests.

(d) *Organization of a FSC.*

Q-7. Under the laws of what countries may a FSC be organized?

A-7. A FSC may not be created or organized under the laws of the United States, a state, or other political subdivision. However, a FSC may be created or organized under the laws of a possession of the United States, including Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and the Virgin Islands of the United States, but not Puerto Rico. These eligible possessions are located outside the U.S. customs territory. In addition, a FSC may incorporate under the laws of a foreign country that is a party to—

(i) an exchange of information agreement that meets the standards of the Caribbean Basin Economic Recovery Act of 1983 (Code section 274(h)(6)(C)), or

(ii) a bilateral income tax treaty with the United States if the Secretary certifies that the exchange of information program under the treaty carries out the purpose of the exchange of information requirements of the FSC legislation as set forth in section 927(e)(3), if the company is covered under the exchange of information program under subdivision (i) or (ii). The Secretary may terminate the certification. Any termination by the Secretary will be effective six months after the date of the publication of the notice of such termination in the *Federal Register*.

(e) *Foreign Trade Income.*

Q-8. How is foreign trade income defined?

A-8. Foreign trade income, defined in section 923(b), is gross income of an FSC attributable to foreign trading gross receipts. It includes both the profits earned by the FSC itself from exports and commissions earned by the FSC from products and services exported by others.

(f) *Investment Income and Carrying Charges.*

Q-9. What do the terms "investment income" and "carrying charges" mean?

A-9.

(i) *Investment income means:*

(A) Dividends,

(B) Interest,

(C) Royalties,

(D) Annuities,

(E) Rents (other than rents from the lease or rental of export property for use by the lessee outside of the United States);

(F) Gains from the sale of stock or securities,

(G) Gains from future transactions in any commodity on, or subject to the

rules of, a board of trade or commodity exchange (other than gains which arise out of a bona fide hedging transaction reasonably necessary to conduct the business of the FSC in the manner in which such business is customarily conducted by others).

(H) Amounts includable in computing the taxable income of the corporation under part I of subchapter J, and

(I) Gains from the sale or other disposition of any interest in an estate or trust.

(ii) *Carrying charges means:*

(A) Charges that are imposed by a FSC or a related supplier and that are identified as carrying charges, ("stated carrying charges") and

(B) (1) Charges that are considered to be included in the price of the property or services sold by an FSC or a related supplier, as provided under Q&As 1 and 2 of § 1.927(d)-1, and (2) any other unstated interest.

Q-10. How are investment income and carrying charges treated?

A-10. Investment income and carrying charges are not foreign trading gross receipts. Investment income and carrying charges are includable in the taxable income of an FSC, except in the case of a commission FSC where carrying charges are treated as income of the related supplier, and are treated as income effectively connected with a trade or business conducted through a permanent establishment within the United States. The source of investment income and carrying charges is determined under sections 861, 862, and 863 of the Code.

(g) *Small Businesses.*

Q-11. What options are available to small businesses engaged in exporting?

A-11. A small business may elect to be treated as either a small FSC or an interest charge DISC. See Q&As 3 & 4 of § 1.921-2 relating to a small FSC. Rules with respect to interest charge DISCs are the subject of another regulations project.

§ 1.922-1 Requirements that a corporation must satisfy to be a FSC or a small FSC.

(a) *FSC requirements.*

Q-1. What are the requirements that a corporation must satisfy to be an FSC?

A-1. A corporation must satisfy all of the requirements of section 922(a).

(b) *Small FSC requirements.*

Q-2. What are the requirements that a corporation must satisfy to be a small FSC?

A-2. A corporation must satisfy all of the requirements of sections 922(a)(1) and (b).

(c) *Definition of corporation.*

Q-3. What type of entity is considered a corporation for purposes of qualifying as an FSC or a small FSC under section 922?

A-3. A foreign entity that is classified as a corporation under section 7701(a)(3) (other than an insurance company) is considered a corporation for purposes of this requirement.

(d) Eligible possession.

Q-4. For purposes of meeting the place of incorporation requirement of section 922(a)(1)(A), what is a possession of the United States?

A-4. For purposes of section 922(a)(1)(A), the possessions of the United States are Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States ("eligible possessions"). Puerto Rico, although a possession for certain tax purposes, does not qualify as a jurisdiction in which a FSC or small FSC may be incorporated.

(e) Qualifying countries.

Q-5. For purposes of meeting the place of incorporation requirement of section 922(a)(1)(A), what is a foreign country and which foreign countries meet the requirements of section 927(e)(3)?

A-5. (i) A foreign country is a jurisdiction outside the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States. (ii) A list of the foreign countries that meet the requirements of section 927(e)(3) ("qualifying countries") will be published from time to time in the *Federal Register* and the *Internal Revenue Bulletin*. A corporation is considered to be created or organized under the laws of a foreign country that meets the requirements of section 927(e)(3) only if the foreign country is a party to (A) an exchange of information agreement under the Caribbean Basin Economic Recovery Act (Code section 274(h)(6)(C)), or (B) a bilateral income tax treaty with the United States if the Secretary certifies that the exchange of information program under the treaty carries out the purposes of the exchange of information requirements of the FSC legislation as set forth in Code section 927(e)(3) and if the corporation is covered under exchange of information program under subdivision (A) or (B).

(f) Number of shareholders.

Q-6. Who is counted as a shareholder of a corporation for purposes of determining whether a corporation meets the limitation on the number of shareholders to no more than 25 under section 922(a)(1)(B)?

A-6. Solely for purposes of the limitation on the number of shareholders, the following rules apply:

(i) In general, an individual who owns an interest in stock of the corporation is counted as a shareholder. In the case of joint owners, each joint owner is counted as a shareholder. A member of a corporation's board of directors who holds qualifying shares that are required to be owned by a resident of the country of incorporation is not counted as a shareholder.

(ii) A corporation that owns an interest in stock of the corporation is counted as a single shareholder.

(iii) An estate that owns an interest in stock of the corporation is counted as a single shareholder. If the limitation on number of shareholders is not satisfied by reason of the closing of an estate, the FSC will continue to qualify for the taxable year of the FSC in which the estate is closed.

(iv) A trust is not counted as a shareholder. In the case of a trust all of which is treated as owned by one or more persons under sections 671 through 679, those persons are counted as shareholders. In the case of all other trusts, a beneficiary is counted as a shareholder.

(v) A partnership is not counted as a shareholder. A general or limited partner is counted as a shareholder if it is a corporation, an individual, or an estate, under the rules contained in subdivisions (i) through (iii). A general or limited partner is not counted as a shareholder if it is a partnership or a trust; the rules contained in subdivision (iv) and this subdivision (v) apply to the determination of who is counted as a shareholder.

(g) Class of stock.

Q-7. What is preferred stock for purposes of determining whether a corporation satisfies the requirement under section 922(a)(1)(C) that no preferred stock be outstanding?

A-7. Preferred stock is stock that is limited and preferred as to dividends or distributions in liquidation.

Q-8. Can a corporation have outstanding more than one class of common stock?

A-8. Yes. However, the rights of a class of stock will be disregarded if the right has the effect of avoidance of Federal income tax. For instance, dividend rights may not be used to direct dividends from exempt foreign trade income to shareholders that have taxable income and to direct other dividends to shareholders that have met operating loss carryovers.

(h) Office.

Q-9. What is an office for purposes of determining whether a corporation

satisfies the requirement of section 922(a)(1)(D)(i)?

A-9. An office is a place for the transaction of the business of the corporation. To be an office a place must meet all of the following requirements:

(i) *It must have a fixed location.* A transient location is not a fixed location.

(ii) *It must be a building or a portion of a building consisting of at least one room.* A room is a partitioned part of the inside of a building. The building or portion thereof used as the corporation's office must be large enough to accommodate the equipment required in subdivision (iii) of this answer 9 and the activity required in subdivision (iv) of this answer 9. However, an office is not limited to a room with communication equipment or an adjacent room. Non-contiguous space within the same building will also constitute an office if it is equipped for the retention of the documentation required to be stored by the FSC and if access to the necessary communication equipment is available for use by the FSC.

(iii) *It must be equipped for the performance of the corporation's business.* An office must be equipped for the communication and retention of information and must be supplied with communication services.

(iv) *It must be regularly used for some business activity of the corporation.* A corporation's business activities must include the maintenance of the documentation described in Q&A 12 of this section. These documents need not be prepared at the office. Any person, whether or not related to the corporation, may perform the business activities of the corporation at the office if the activity is performed pursuant to a contract, oral or written, for the performance of the activity on behalf of the corporation.

(v) *It must be operated, and owned or leased, by the corporation or by a person, whether or not related to the corporation, under contract to the corporation.*

(vi) *It must be maintained by the corporation or by a person, whether or not related, to the corporation, under contract to the corporation at all times during the taxable year.* In the case of a corporation newly organized as a FSC, thirty days may elapse between the time the corporation is organized as a FSC (i.e., the first day for which the FSC election is effective) and the time an office is maintained by the corporation or a person under contract with the corporation. A place that meets the requirements in subdivision (i) through (vi) of this answer 9 can also be used for

activities that are unrelated to the business activity of the corporation.

Q-10. Can a corporation locate an office in any foreign country if it has at least one office in a U.S. possession or in a foreign country that meets the requirements of section 927 (e)(3) as provided Q&A 5 of this section?

A-10. Yes.

Q-11. Must a corporation locate the office that is required under section 922(a)(1)(D)(i) in the country or possession of its incorporation?

A-11. No.

(i) *Documentation.*

Q-12. What documentation must be maintained at the corporation's office for purposes of section 922(a)(1)(D)(ii)?

A-12. At least the following documentation must be maintained at the corporation's office under section 922(a)(1)(D)(ii):

(i) The quarterly income statements, a final year-end income statement and a year-end balance sheet of the FSC; and

(ii) All final invoices (or a summary of them) or statements of account with respect to (A) sales by the FSC, and (B) sales by a related person if the FSC realizes income with respect to such sales. A final invoice is an invoice upon which payment is made by the customer. A invoice must contain, at a minimum, the customer's name or identifying number and, with respect to the transaction or transactions, the date, product or product code or service of service code, quantity, price, and amount due. In the alternative, a document will be acceptable as a final invoice even though it does not include all of the above listed information if the FSC establishes that the document is considered to be a final invoice under normal commercial practices. An invoice forwarded to the customer after payment has been tendered or received pursuant to a letter of credit, as a receipt for payment, satisfies this definition. A single final invoice may cover more than one transaction with a customer.

(iii) A summary of final invoices may be in any reasonable form provided that the summary contains all substantive information from the invoices. All substantive information includes the customer's name or identifying number, the invoice number, date, product or product code, and amount owed. In the alternative, all substantive information includes a summary of the information that is included on documents considered to be final invoices under normal commercial practice. A statement of account is any summary statement forwarded to a customer to inform of, or confirm, the status of transactions occurring within an

accounting period during a taxable year that is not less than one month. A statement of account must contain, at a minimum, the customer's name or identifying number, date of the statement of account and the balance due (even if the balance due is zero) as of the last day of the accounting period covered by the statement of account. In the alternative, a document will be accepted as a statement of account even though it does not include all of the above listed information if the FSC establishes that the document is considered a statement of account under normal commercial practice. For these purposes, a document will be considered to be a statement of account under normal commercial practice if it is sent to domestic as well as to export customers in order to inform the customers of the status of transactions during an accounting period. With regard to quarterly income statements, a reasonable estimate of the FSC's income and expense items will be acceptable. If the FSC is a commission FSC, 1.83% of the related supplier's gross receipts will be considered a reasonable estimate of the FSC's income. The documents required by this Q&A 12 need not be prepared by the FSC. In addition they need not be prepared at the FSC's office.

(iv) The FSC will satisfy the requirement that the documents be maintained at its office even if not all final invoices (or summaries) or statements of account or items to be included on statements of account are maintained at its office as long as it makes a good faith effort to do so and provided that any failure to maintain the required documents is cured within a reasonable time of discovery of the failure.

Q-13. If the required documents are not prepared at the FSC's office, by what date must the documents be maintained at its office?

A-13. With regard to the applicable quarters of years prior to March 3, 1987, the quarterly income statements, final invoices (or summaries), or statements of account and the year-end balance sheet must be maintained at the FSC's office no later than the due date, including extensions, of the FSC tax return for the applicable taxable year in which the period ends. With regard to the applicable quarters or years ending after March 3, 1987, the quarterly income statements for the first three quarters of the FSC year must be maintained at the FSC's office no later than 90 days after the end of the quarter. The quarterly income statement for the fourth quarter of the FSC year, the final year-end income statement, the year-end balance sheet, and the final invoices (or

summaries) or statements of account must be maintained at the FSC's office no later than the due date, including extensions, of the FSC tax return for the applicable taxable year.

Q-14. In what form must the documentation required under section 922(a)(1)(D)(ii) be maintained?

A-14. The documentation required to be maintained by the office may be originals or duplicates and may be in any form that qualifies as a record under Rev. Rul. 71-20, 1971-1 C.B. 392. Therefore, documentation may be maintained in the form of punch cards, magnetic tapes, disks, and other machine-sensible media used for recording, consolidating, and summarizing accounting transactions and records within a taxpayer's automatic data processing system. The corporation need not maintain at its office equipment capable of reading the machine-sensible media. That equipment, however, must be situated in a location that is readily accessible to the corporation. The equipment need not be owned by the corporation.

Q-15. How long must the documentation required under section 922(a)(1)(D)(ii) be maintained?

A-15. The documentation required under section 922(a)(1)(D)(ii) for a taxable year must be maintained at the FSC's office described in section 922(a)(1)(D)(i) until the period of limitations for assessment of tax for the taxable year has expired under section 6501.

Q-16. Under what circumstances will a corporation be considered to satisfy the requirement of section 922(a)(1)(D)(iii) that it maintain the records it is required to keep under section 6001 at a location within the United States?

A-16. A corporation will be considered to satisfy this requirement if the records required under section 6001 are kept by any person at any location in the United States provided that the records are retained in accordance with section 6001 and the regulations thereunder.

(j) *Board of directors.*

Q-17. What is a corporation's "board of directors" for purposes of the requirement under section 922(a)(1)(E) that, at all times during the taxable year, the corporation must have a board of directors which includes at least one individual who is not a resident of the United States?

A-17. The "board of directors" is the body that manages and directs the corporation according to the law of the qualifying country or eligible possession under the laws of which the corporation was created or organized.

Q-18. Can the member of the board of directors who is a nonresident of the United States be a citizen of the United States?

A-18. Yes. For purposes of meeting the requirement under section 922(a)(1)(E), the member of the board who cannot be a United States resident can be a United States citizen. The principles of section 7701(b) shall be used to determine whether a United States citizen is a United States resident.

Q-19. If the only member of the board of directors who is not a resident of the United States dies, or resigns, is removed from the board or becomes a resident of the United States will the corporation be considered to fail the requirement under section 922(a)(1)(E)?

A-19. If the corporation appoints a new member who is a nonresident of the United States to the board within 30 days after the death, resignation or removal of the former nonresident member, the corporation will be considered to satisfy the requirement under section 922(a)(1)(E). Also, the corporation will be considered to satisfy the requirement under section 922(a)(1)(E) if the corporation appoints a new member who is a nonresident of the United States to the board within 30 days after the corporation has knowledge, or reason to know, that the board's former nonresident member was in fact a resident of the United States.

Q-20. Is a nonresident alien individual who elects to be treated as a resident of the United States for a taxable year under section 6013(g) considered a nonresident of the United States for purposes of the requirement under section 922(a)(1)(E)?

A-20. Yes.

Q-21. Will the requirement that a FSC's board of directors have a nonresident member at all times during the taxable year be satisfied if the nonresident member is elected or appointed to the board of directors no later than 30 days after the first day for which the FSC election is effective?

A-21. Yes.

§ 1.927(d)-1 Other definitions.

(a) Carrying Charges.

Q-1. Under what circumstances is the sales price of property or services sold by a FSC or a related supplier considered to include carrying charges as defined in subdivision (ii)(B)(1) of Q&A-9 of § 1.921-2?

A-1. (i) The proceeds received from a sale of export property by a FSC or a related supplier (or the amount paid for services rendered or from rental of export property) may include carrying charges if any part of the sale proceeds (or service or rental payment) is paid

after the end of the normal payment period. If the export property is sold or leased by, or if the services are rendered by, the FSC, the entire carrying charges amount as determined in Q&A-2 of this section will be the income of the FSC. If, however, the FSC is the commission agent of a related supplier on these transactions, the carrying charges amount so determined is income of the related supplier. The commission payable to the FSC will be computed by reducing the related supplier's gross receipts from the transaction by the amount of the carrying charges. No carrying charges will be assessed on the commissions paid by the related supplier to the FSC. The carrying charges provisions, likewise, do not apply to any other transaction that does not give rise to foreign trading gross receipts.

(ii) The normal payment period for a sale transaction is 60 days from the earlier of date of sale or date of exchange of property under the contract. For this purpose, the date of sale will be the date the sale is recorded on the seller's books of account under its normal accounting method. The date the transaction was recorded on the seller's books of account shall be disregarded if recording is delayed in order to delay the start of the normal payment period. In these circumstances, the earlier of the date of the contract or date of exchange of property will be deemed the date of sale. For related and subsidiary services that are not separately stated from the sale or lease transaction, the earlier of the date of the sale or date the export property is delivered to the purchaser is the applicable date. For related and subsidiary services which are separately stated from the sale or lease transaction and for other services, such as engineering and architectural services, the normal payment period is 60 days from the earlier of the date payment is due for the services or the date services under the contract are completed. The date of completion of a services contract is the date of final approval of the services by the recipient. With regard to transactions involving the lease or rental of export property, the normal payment period will begin on the date the rental payment is due under the lease. The date the normal payment period begins under this subdivision (ii) will be the same whether or not the transaction is with a related person.

(iii) The carrying charges are computed for the period beginning with the first day after the end of the normal payment period and ending with the date of payment. A FSC may elect at any time prior to the close of the statute of limitations of section 6501(a) for the

FSC taxable year to treat the final date of payment stated in the contract as the date of payment if—

(A) the contracts for all transactions completed during the taxable year require that payment be received within the normal payment period,

(B) no more than 20% of transactions for which final payment is received in the taxable year involve payment after the end of the normal payment period. For FSC taxable years beginning after March 3, 1987, the 20% test will apply only to the dollar value of the transactions and not to the number of transactions. For prior taxable years, the 20% test will apply to either the dollar value of the transactions or to the number of transactions. The special grouping rules applicable to determination of the FSC's profit under the administrative pricing rules of section 925 may be applied to this elective provision. Accordingly, transactions may be grouped into product or product-line groupings to determine whether 20% or less of the dollar value (or number of transactions, if applicable) of the grouped transactions involve payment after the end of the normal payment period.

Q-2. How are carrying charges as defined in subdivision (ii)(B)(1) of Q&A 9 of § 1.921-9 computed?

A-2. If carrying charges as defined in subdivision (ii)(B)(1) of Q&A 9 of § 1.921-9 are considered to be included in the sale price of property income or rental payment services, the amount of the carrying charges is equal to the amount in subdivision (i) of this answer if the contract provides for stated interest or the amount in subdivisions (ii) or (iii) of this answer, whichever is applicable, if the contract does not so provide.

(i) If a contract provides for stated interest beginning on the day after the end of the normal payment period, carrying charges will accrue only if the stated interest rate is less than the short-term, monthly Federal rate as of the day after the end of normal payment period and then only to the extent the stated interest is less than the short-term, monthly Federal rate. The short-term, monthly Federal rate is that rate as determined for purposes of section 1274(d) and which is published in the Internal Revenue Bulletin. Carrying charges will not accrue, however, unless payments are made after the end of the normal payment period.

(ii) If a contract for a transaction does not provide for stated interest, and if the taxpayer does not elect the method described in subdivision (iii) of this

answer, the amount of carrying charges is equal to the excess of—

(A) The amount of the sales price of property, services income or rental payment that is unpaid on the day after the end of the normal payment period, over

(B) The present value, as of the day after the end of the normal payment period, of all payments that are required to be made under the contract and that are unpaid on the day after the end of the normal payment period. The amount of the sales price of property, service income or rental payment is the amount under the contract whether it be the sales price, amount paid for services or the rental amount determined as of the actual payment date unless a FSC makes the election provided under subdivision (iii) of Q&A 1. If a FSC makes the election provided under subdivision (III) of Q&A 1, the amount of the sales price is the sales price, services income or rental payment under the contract determined as of the final payment date stated in the contract. All payments that are required to be made under the contract include the stated sales price, services income or rental payment as well as stated amounts of interest and carrying charges. The discount rate for the present value computation is simple interest at the short-term monthly Federal rate published in the Internal Revenue Bulletin, determined as of the day after the end of the normal payment period. The present value of a payment is calculated as follows:

$$P = S \frac{1}{(1 + (i \times t))}$$

P = present value of a payment that is required and unpaid after the end of the normal payment period

S = amount of a payment that is required and unpaid after the end of the normal payment period

i = the short-term monthly Federal rate

t = the number of days after the end of the normal payment period and before date of payment divided by 365.

If a sale is made, or if services are completed, or if rent is due under a lease in a taxable year and the required date of payment is in a later taxable year, carrying charges for the first taxable year are computed for the number of days after the end of the normal payment period and before the end of the taxable year. For the following

taxable year, carrying charges are computed for the number of days after the beginning of the taxable year and before the date of payment.

(iii) At the election of the taxpayer, the amount of carrying charges may be determined under the method described in this subdivision (iii). If the taxpayer elects this method, it must be used for all applicable transactions within the taxable year of the FSC. If this optional method is used, the computation of carrying charges must be made separately for transactions involving related persons and for those transactions involving unrelated persons. In addition, the computation of carrying charges must be made separately for each of the five types of income of the FSC (or of the related supplier if the related supplier is the principal on the transaction) listed in subparagraph (1) through (5) of section 924(a). These groupings are separate and distinct from the groupings that are established for purposes of determining the FSC's profit on the export transactions. The optional method allowed in this subdivision provides that the amount of carrying charges for a taxable year of a FSC (or related supplier if the related supplier is the principal on the export transaction) is computed using the average of receivables of unrelated persons (or of related persons) and the average time those receivables are outstanding. Receivables are included in this computation only if they are from transactions on which foreign trading gross receipts, as defined in section 924(a), are received by the FSC (or which are received by a related supplier of a FSC and which would have been foreign trading gross receipts had they been received by the FSC). Carrying charges are calculated under this method as follows:

CC = (AR) (I/365) (X) (Y)
CC = Carrying charges

36 days

365 days

Step 3: Using the short-term monthly Federal rate and the fraction of the year, compute the present value of the payment.

$$P = S \frac{1}{(1 + (i \times t))}$$

AR = Average monthly receivables balance for the taxable year

I = The average short-term, monthly Federal rate for the year

X = The number of times receivables turn over in the year

Y = The number of days the average receivables are outstanding over 60 days.

This optional method is illustrated in Example (5) in subdivision (v) of this answer.

(iv) The computation of carrying charges under this answer 2 applies only to the determination of carrying charges under subdivision (ii)(B)(1) of Q&A 9 of § 1.921-2 and does not apply to the determination of any other unstated interest or for any other purpose.

(v) The following examples illustrate the computation of carrying charges under this section:

Example (1). On January 1, 1985, a FSC sells export property for \$10,000. The export property is delivered to the purchaser on January 10, 1985. The terms of the contract require payment within 90 days after sale. The normal payment period is 60 days. The FSC does not make an election under subdivision (iii) of Q&A. The contract does not require the payment of any interest or carrying charges. The purchaser pays the entire sales price on March 1, 1985. The sales price is not considered to include any carrying charges because the purchase paid the entire sales price within the normal payment period.

Example (2). The facts are the same as in example (1) except that the purchaser pays the entire sales price on April 6, 1985, 96 days after the earlier of the date of sale or date of delivery (i.e., January 1, 1985). Therefore, the sales price is considered to include carrying charges computed as follows:

Step 1: Determines the short-term monthly Federal rate as of the earlier of date of sale or date of delivery. For purposes of this example, the rate is 10%.

Step 2: Determine the fraction of the year represented by the number of days after 60 days and before date of payment. In this example, the number of days beyond 60 is 96-60=36, which is divided by 365

= .099 fraction of the year

$$P = \$10,000 \frac{1}{(1 + (.10 \times .099))}$$

P = \$10,000 (.99)

P = \$9,900

Step 4: Using the present value of all payments, compute the carrying charges.

Carrying Charges = Sales Price less Present Value.

\$10,000	Sales Price
-9,900	Present Value
\$100	Carrying charges

Example (3). On October 15, 1985, F, a FSC, leases export property to X for one month with a total rental due of \$20,000. Under the terms of the lease, A agreed to pay F \$10,000 on October 15, 1985, and the remaining \$10,000 on January 15, 1986. The contract does not require the payment of any interest or carrying charges. The second \$10,000 payment is made on January 3, 1986. This payment does not include any carrying charges because X paid the \$10,000 before the start of the normal payment period.

Example (4). On October 15, 1985, F, a FSC, leases export property to X, for one month with a total amount due under the lease of \$10,000, payable on October 15, 1985. X delays payment until January 19, 1986, which was 96 days after the start of the normal payment period. The 60 day normal payment period terminated on December 14, 1985. Therefore, the lease payment is considered to include carrying charges of \$100 computed in the same manner as in *Example (2)*. Of this \$100, 17/36, or \$47.22, is carrying charges for 1985 (i.e., 17 days in December), and 19/36, or \$52.78, is carrying charges for 1986.

Example (5). During 1986, F, a FSC, sold on account export properties A and B to related and unrelated persons.

(A) *Unrelated persons.* During 1986, the sales on account to unrelated persons totaled \$6,000. On the last day of each of the months of 1986, F had total receivables from unrelated persons from sales of export properties A and B, as follows:

January 31.....	\$1,400
February 28.....	1,400
March 31.....	1,000
April 30.....	1,000
May 31.....	1,200
June 30.....	1,300
July 31.....	1,000
August 31.....	1,300
September 30.....	1,500
October 31.....	1,100
November 30.....	1,200
December 31.....	1,000
	<u>14,400</u>

Carrying charges for 1986 with unrelated persons under the optional method of subdivision (iii) of this answer will be \$19.23, computed as follows:

Step 1: Determine the average short-term, monthly Federal rate for the year. For purposes of this example, the rate is assumed to be 9%.

Step 2: Determine the average receivables for the year. This average is calculated by totaling the end of the month receivables balance of each month of the year and dividing by twelve. In this example, the average monthly receivables balance is \$1,200, calculated as follows:

$$\$1,200 = \$14,400/12$$

Step 3: Determine the number of times the receivables turn over during the year. This is calculated by dividing the sales on account for the year by the average monthly receivables balance for the year. For purposes of this example, receivables turned over 5 times for 1986, computed as follows:

$$5 = \frac{\$6,000}{\$1,200}$$

Step 4: Determine the number of days the average receivables are outstanding in excess of 60 days. In this example, there are 13 receivable days in excess of 60 days, computed as follows:

$$13 \text{ days} = (365/5) - 60 \text{ days}$$

Step 5: The amount of carrying charges, \$19.23, is calculated by using the following equation:

$$CC = (AR) (1/365) (X)(Y)$$

CC = Carrying charges

AR = Average monthly receivables balance for the taxable year (step 2)

1 = The average short-term monthly Federal rate for the year (step 1)

X = The number of times receivables turn over in the year (step 3)

Y = The number of days the average receivables are outstanding over 60 days (step 4).

$$CC = \$19.23 = (\$1,200) (.09/365) (5) (13)$$

(B) *Related persons.* Carrying charges, if any, on the sales on account to related persons must be computed separately using this optional method.

Q-3. Is a discount from the sales price of property or services for prompt payment considered to be stated carrying charges as defined in subdivision (ii)(A) of Q&A 9 of § 1.921-2?

A-3. No.

Q-4. Is the receipt of an arm's length factoring payment from an unrelated person considered a payment of the sales proceeds for purposes of determining whether payment is made within the normal payment period and the possible imposition of carrying charges?

A-4. Yes.

§ 1.927(f)-1 Election and termination of status as a Foreign Sales Corporation.

(a) *Election of status as a FSC or a small FSC.*

Q-1. What is the effect of an election by a corporation to be treated as a FSC or small FSC?

A-1. A valid election to be treated as a FSC or a small FSC applies to the taxable year of the corporation for which made and remains in effect for all succeeding taxable years in which the corporation qualifies to be a FSC unless revoked by the corporation or unless the

corporation fails for five consecutive years to qualify as a FSC (in case of a FSC election) or as a small FSC (in case of a small FSC election).

Q-2. Can a corporation established prior to January 1, 1985 be treated as a FSC or a small FSC prior to making a FSC or a small FSC election?

A-2. A corporation cannot be treated as a FSC or a small FSC until it has made a FSC or a small FSC election. An election made within the first 90 days of 1985 relates back to January 1, 1985 unless the taxpayer indicates otherwise.

Q-3. If a shareholder who has not consented to a FSC or small FSC election transfers some or all of its shares before or during the first taxable year for which the election is made, may the holder of the transferred shares consent to the election?

A-3. A holder of the transferred shares may consent to a FSC or small FSC election under the circumstances described in § 1.922-2(c)(1). The rules contained in § 1.992-(c) shall apply to the consent by a holder of transferred shares.

Q-4. If a shareholder who has consented to a FSC or a small FSC election transfers some or all of its shares before the first taxable year for which the election is made, must the holder of the transferred shares consent to the election?

A-4. Yes. Consent must be made by any recipient of such shares on or before the 90th day after the first day of such first taxable year. If such recipient fails to file his consent on or before such 90th day, and extension of time for filing such consent may be granted in the manner, and subject to the conditions, described in paragraph (b)(3) of § 1.992-2.

Q-5. May an election of a corporation to be a FSC or a small FSC be effective as of a time other than the start of the corporation's taxable year?

A-5. No.

Q-6. If a fiscal year foreign corporation was in existence on December 31, 1984, must it wait until the first day of its taxable year beginning after January 1, 1985, to elect FSC status?

A-6. No. If a fiscal year foreign corporation was in existence on December 31, 1984, its taxable year will be deemed to have terminated on that date if the foreign corporation elects FSC status to be effective January 1, 1985. An income tax return will be required for any short years created by the deemed closing of the taxable year unless the corporation is relieved from the necessity of making a return by section 6012 and the regulations under that section. If the corporation's taxable

year is deemed closed by operation of this regulation, the filing date of tax returns for the short taxable year ended on December 31, 1984, will be automatically extended until May 18, 1987.

Q-7. What is the effect of an election to be treated as a FSC or as a small FSC if the corporation or any other member of the controlled group has in effect an election to be treated as an interest charge DISC?

A-7. The interest charge DISC election shall be treated as revoked for all purposes under the Code as of the date the FSC election is effective. An affirmative revocation of the DISC election is unnecessary. The FSC election shall take effect. As long as the FSC election remains in effect, neither the corporation nor any other member of the controlled group is permitted to elect to be treated as an interest charge DISC for any taxable year including any part of a taxable year during which the corporation's FSC election continues to be effective.

Q-8. What is the effect of an election to be treated as a small FSC if the corporation or any other member of the controlled group has in effect an election to be treated as a FSC?

A-8. As long as a FSC election remains in effect, neither the corporation nor any other member of the controlled group is permitted to elect to be treated as a small FSC for any taxable year including any part of a taxable year during which a FSC election continues to be effective. Any FSC within the controlled group must affirmatively revoke its FSC election for a taxable year including any part of a taxable year for which small FSC status is elected.

Q-9. What is the effect of an election to be treated as a FSC if the corporation or any other member of the controlled group has in effect an election to be treated as a small FSC?

A-9. As long as a small FSC election remains in effect, neither the corporation nor any other member of the controlled group is permitted to elect to be treated as a FSC for any taxable year including any part of the taxable year during which a small FSC election continues to be effective. Any small FSC within the controlled group must affirmatively revoke its small FSC election for a taxable year including any part of a taxable year for which FSC status is elected. An election to be treated as a small FSC is permitted if the corporation or any other member of the controlled group has in effect an election

to be treated as a small FSC. For a special rule providing for conversion of a small FSC to a FSC within one taxable year, see § 1.921-1T(b)(1) (Q&A-1).

(b) Termination of election of status as a FSC or a small FSC.

Q-10. How is the status of a corporation as a FSC or as a small FSC terminated?

A-10. The status of a corporation as a FSC or as a small FSC is terminated through revocation or by its continued failure to be a FSC.

Q-11. For what taxable year may a corporation revoke its election to be treated as a FSC or as a small FSC?

A-11. A corporation may revoke its election to be treated as a FSC or as a small FSC for any taxable year of the corporation after the first taxable year for which the election is effective.

Q-12. When must a corporation revoke a FSC or a small FSC election if revocation is to be effective for the taxable year in which revocation takes place?

A-12. If a corporation files a statement revoking its election to be treated as a FSC or as a small FSC during the first 90 days of a taxable year (other than the first taxable year for which such election is effective), such revocation will be effective for such taxable year and all taxable years thereafter. If the corporation files a statement revoking its election to be treated as a FSC or a small FSC after the first 90 days of a taxable year, the revocation will be effective for all taxable years following such taxable year.

Q-13. Can a FSC change its status to a small FSC, or can a small FSC change its status to a FSC as of a date other than the first day of a taxable year?

A-13. No. Since a revocation of an election to be a FSC or a small FSC is effective only for entire taxable year, a corporation's change between FSC and small FSC status is effective as of the first day of a taxable year.

Q-14. How may a corporation revoke an election by a corporation to be treated as a FSC or a small FSC?

A-14. A corporation may revoke its election by filing a statement that the corporation revokes its election under section 922(a) to be treated as a FSC or under section 922(b) to be treated as a small FSC. Such statement shall indicate the corporation's name, address, employer identification number, and the first taxable year of the corporation for which the revocation is to be effective. The statement shall be signed by any person authorized to sign a corporate

return under section 6062. Such revocation shall be filed with the Service Center with which the corporation filed its return.

Q-15. What if the effect is a corporation that has elected to be treated as a FSC or a small FSC fails to qualify as a FSC because it does not meet the requirements of section 922 for a taxable year?

A-15. If a corporation that has elected to be treated as a FSC or a small FSC does not qualify as a FSC or a small FSC for a taxable year, the corporation will not be treated as a FSC or a small FSC for the taxable year. However, the failure of a corporation to qualify to be treated as a FSC or a small FSC for a taxable year does not terminate the election of the corporation to be treated as FSC or a small FSC unless the corporation does not qualify under section 922 for each of 5 consecutive taxable years, as provided in Q&A 16 of this section.

Q-16. Under what circumstances is the FSC or small FSC election terminated for continued failure to be a FSC?

A-16. If a corporation that has elected to be treated as a FSC or a small FSC does not qualify under section 922 to be treated as a FSC or small FSC for each of 5 consecutive taxable years, such election terminates and will not be effective for any taxable year after such fifth taxable year. Such termination will be effective automatically without notice to such corporation or to the Internal Revenue Service.

PART 602—[AMENDED]

OMB Control Numbers Under the Paperwork Reduction Act

(26 CFR Part 602)

Par. 4. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805. * * *

§ 602.101 [Amended]

Par. 5. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.921-2 . . . 1545-0884", "§ 1.922-1 . . . 1545-0884", "§ 1.927 (d)-1 . . . 1545-0884", and "§ 1.927 (f)-1 . . . 1545-0884".

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved: January 27, 1987.

J. Roger Mentz,
Assistant Secretary of the Treasury.
[FR Doc. 87-4003 Filed 3-2-87; 8:45 am]
BILLING CODE 4830-01-M

Federal Register

**Tuesday
March 3, 1987**

Part III

Department of Education

**Office of Special Education and
Rehabilitative Services**

**Secondary Education and Transitional
Services for Handicapped Youth
Program; Annual Funding Priorities;
Notice**

DEPARTMENT OF EDUCATION**Office of Special Education and Rehabilitative Services****Secondary Education and Transitional Services for Handicapped Youth Program; Annual Funding Priorities****AGENCY:** Department of Education.**ACTION:** Notice of final annual funding priorities.

SUMMARY: The Secretary announces annual funding priorities for the Secondary Education and Transitional Services for Handicapped Youth Program to ensure effective use of program funds and to direct funds to areas of identified need during fiscal year 1987.

EFFECTIVE DATE: These final annual funding priorities take effect either 45 days after publication in the *Federal Register* or later if Congress takes certain adjournments. If you want to know the effective date of these final annual funding priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: The person listed in each individual final priority.

SUPPLEMENTARY INFORMATION: The Secondary Education and Transitional Services for Handicapped Youth Program is authorized by section 626 of Part C of the Education of the Handicapped Act, most recently amended by the Education of the Handicapped Amendments of 1986, Pub. L. 99-457. Application packages will reflect the statutory changes made by these amendments. This program supports research, development, demonstration, evaluation, and other types of projects that: (1) Strengthen and coordinate activities to assist in the transition to postsecondary education, vocational training, competitive employment (including supported employment), continuing education, or adult services for handicapped youth currently in school or who recently left school; (2) stimulate the improvement and development of programs for secondary special education; and (3) stimulate the improvement of the vocational and life skills of handicapped students to enable them to be better prepared for transition to adult life and services.

Summary of Comments and Responses

A notice of proposed annual funding priorities was published in the *Federal Register* on October 14, 1986 at 51 FR 36670. The public was given thirty days in which to comment. Two comments

were received in response to the notice of proposed annual funding priorities. These comments were in support of the priorities. Therefore, no changes have been made.

Eligible Applicants

Awards are made under this program to institutions of higher education, State educational agencies, local educational agencies, and other public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act).

Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary gives an absolute preference in fiscal 1987 to applications for projects that respond to one of the priorities described below. An absolute preference is one which permits the Secretary to select only those applications that meet the described priorities.

Priority 1—Models for Cooperative Planning and Implementation of Transitional Services

This priority supports model projects for cooperative planning and implementation of transitional services for handicapped youth between State, intermediate, and local educational agencies and adult service providers. These projects must: (1) Identify systemic barriers in agencies affecting the transition of handicapped youth from school to work; (2) develop and implement innovative approaches for transitional service delivery; and (3) evaluate the effectiveness of cooperative planning and implementation efforts. Adult service providers include: vocational rehabilitation, mental health, mental retardation, and adult education agencies as well as community colleges, centers for independent living, private and public employers and other similar providers.

Projects submitted under this priority must include a planning phase which consists of cooperative planning for delivering transitional services and an implementation and evaluation phase which develops, implements and evaluates transitional services to handicapped youth. These models must be innovative approaches to the cooperative planning and implementation of transitional services to handicapped youth across agencies, not an extension or replication of

current efforts. The cooperative planning must extend beyond collaboration to new formal working commitments and agreements.

The focus of the cooperative planning phase must be to identify and address systemic barriers to effectively linking a handicapped youth existing from school with adult service providers who can provide postsecondary training, employment, and other related services. Applicants must document the need for, and potential impact of, the project. The planning process should result in an implementation plan which: Presents an analysis of systemic barriers to providing effective transitional services to handicapped youth; proposes solutions to ameliorate the systemic barriers; describes implementation procedures; and incorporates a rigorous evaluation plan. In addition, the planning process should be sufficiently documented in terms of procedures, resources required, and outcomes obtained so that others could replicate the cooperative planning process.

The implementation phase of these model projects must result in replicable approaches highlighting the procedures and resources required to coordinate and provide effective transitional services leading to employment, training and other related services for handicapped youth exiting school. These models must be rigorously evaluated to determine their effectiveness.

For further information contact: Dr. William Halloran, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone (202) 732-1112.

Priority 2—The Development, Access, and Use of Interpersonal Contacts, Relationships, and Networks by Handicapped Youth

It is increasingly apparent that school, work, community, and leisure contacts, relationships, and networks are important in the successful adjustment of handicapped youth while in school and in the transition to adult life. Such contacts, relationships, and networks may be casual (passengers on the bus), personal (family and friends), or formal (an organized club, recreation program, or service agency). All, however, when appropriately developed and used can reduce the social isolation of handicapped individuals as well as assist them in solving problems encountered day-to-day in school, work, community, and leisure settings.

This priority supports research projects that: (1) Examine factors (attitudes, contexts, behaviors, social skills, etc.) related to the development, access, or use by handicapped youth of contacts, relationships, and networks in naturally occurring school, work, community, and leisure settings; (2) develop strategies that result in improved social interaction opportunities for handicapped youth through the access and use of contacts, relationships, and networks; and (3) determine the effectiveness of those intervention and support strategies for promoting the personal development, social adjustment, and community integration of handicapped youth.

For further information contact: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732-1099.

Priority 3—Models for Providing Secondary Mainstreamed Learning Disabled and Other Mildly Handicapped Students With Job-Relation Training

This priority supports projects that: (1) Identify the job-related training and experience needed by mainstreamed secondary-aged learning disabled and other mildly handicapped students if they are to successfully exit school to competitive employment and an

independent adult life; (2) develop vocational/occupational intervention models providing job-related training and experience while maintaining the student's placement predominantly within general education; and (3) evaluate the effectiveness of the model using quantitative and qualitative evaluation approaches and incorporating comparison groups or cohorts into the evaluation design.

The target population for these projects are learning disabled and other mildly handicapped students at the secondary level receiving special education services within the general education class or receiving up to two hours of special education per day within a resource room class setting. It is expected that applications submitted under this priority will provide detailed information regarding the needs and problems encountered by the target population, and will describe procedures for supplementing this information base and obtaining additional baseline data within the early months of the project. It is further expected that the proposed models will be directly linked to the identified problems and needs and that the application will provide a conceptual framework based on special education, vocational education, and vocational rehabilitation research that shows the links between the identified problems and proposed intervention strategies. Finally, applications submitted under this priority must propose intervention models that are

consistent with State and district requirements for obtaining a high school diploma upon graduation.

For further information contact: Dr. William Halloran, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732-1112.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document provides early notification of the Department's plans and actions for this program.

(20 U.S.C. 1425)

(Catalog of Federal Domestic Assistance Number 84.158; Secondary Education and Transitional Services for Handicapped Youth Program)

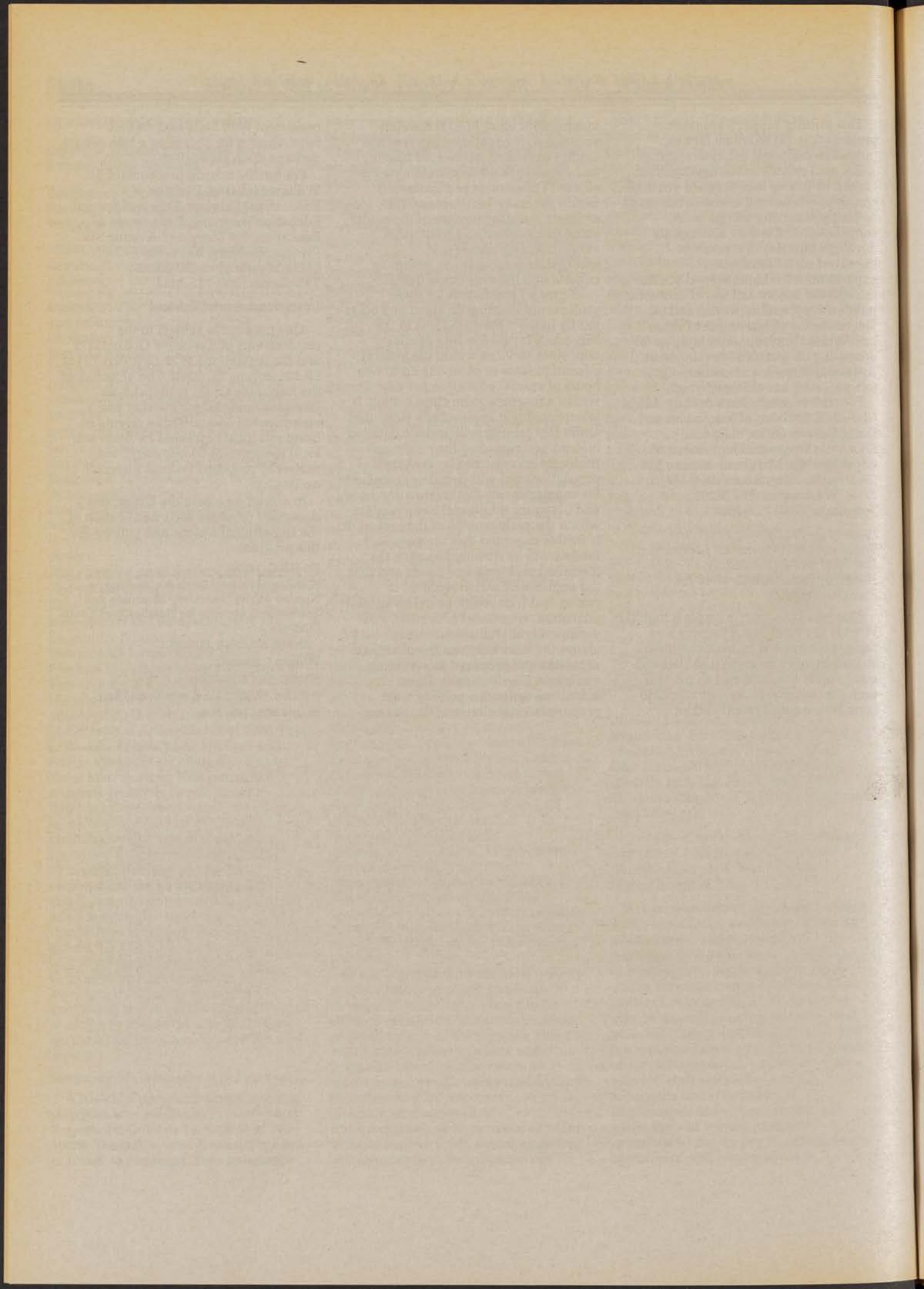
Dated: February 13, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-4375 Filed 3-2-87; 8:45 am]

BILLING CODE 4000-01-M



Fast Facts

Tuesday
March 3, 1987

Part IV

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 40

**Administration of Education Loans,
Grants and Other Assistance for Higher
Education; Proposed Rule**

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 40

Administration of Educational Loans, Grants and Other Assistance for Higher Education

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is proposing to revise Part 40 of Chapter I, Title 25 of the Code of Federal Regulations. The revision provides for retitling Part 40 from "Administration of Educational Loans, Grants and Other Assistance for Higher Education" to "Administration of the Higher Education Grant Program". The regulations also revise established grant and financial aid policies, introduce uniform procedures for the administration of the higher education grant program and include requirements to improve the administrative efficiency of the program. The revisions contain guidelines to maintain consistent and equitable practices in administering grants and also provide for the adherence to the purpose and mission of the Bureau program.

Closing dates for filing applications and requiring applicants to apply for other available financial aid are also included. The application of uniform procedures is proposed to provide a fair and equitable delivery of higher education services on a Bureau-wide basis.

Setting academic standards and instituting procedures for placing students on probation and suspension are established to assist scholarship and financial aid officers in applying consistent standards for continuing to fund or to dismiss students with poor academic records. In addition, a payback provision is added for those students who fail to enroll, officially or unofficially withdraw or are expelled prior to completing an academic term without sufficient cause.

DATE: Public comments must be received on or before April 2, 1987.

ADDRESS: Mail or hand deliver comments to: Ronal D. Eden, Acting Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs), Bureau of Indian Affairs, Department of the Interior, Main Interior, Room 3515, Code 500, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Esther Whalen, Office of Indian Education Programs, Bureau of Indian

Affairs, Department of the Interior, Washington, DC 20240, telephone number: (202) 343-4871.

SUPPLEMENTARY INFORMATION: The United States Department of Education (ED) published regulations in March 1975 setting forth the manner in which financial aid packages are administered for Indian students also eligible to receive education grants from the Bureau of Indian Affairs (BIA). The Bureau found that, in the absence of regulations specific to its program and its Indian students, recipient higher education institutions did not practice nor carry out the purpose of the BIA program. These regulations are proposed to remedy these inconsistencies in the grant programs by introducing several changes and additions.

Definitions used in financial aid programs that apply to the Bureau's education grant program are incorporated into these regulations. The undergraduate grant and higher education grants are clearly defined. Eligibility requirements are changed to require an applicant to be a member of a tribe, and to have financial need as determined by the eligible institution's financial aid office according to the U.S. Department of Education's standard formula used to evaluate information the students supply on their standard application form.

Standard application forms and "Financial Aid Package" forms are designed to document the need for financial assistance and will be evaluated by the standard formula used by the Department of Education. Applications are to be considered solely on the basis of meeting these standards and will be processed in order of receipt.

The Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs) recognizes the definition "near reservation" cited in 25 CFR 20.1(r) for purposes of these regulations.

Previously titled "Administration of Educational Loans, Grants and Other Assistance for Higher Education", 25 CFR Part 40, in order to more properly explain the program within this Part, is hereby retitled "Administration of the Higher Education Grant Program."

These revised regulations cover educational grants and will include a payback provision for those students who terminate their enrollment without sufficient cause.

The information collection requirements contained in §§ 40.22, 40.25 and 40.26 have been submitted to the Office of Management and Budget

for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget. The Financial Aid Package Form, Annual Report Form, and Grant Application Form have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1076-0099, 1076-0106, and 1076-0101 respectively. However, the Financial Aid Form and Grant Application Form have an expiration date of 8/31/87, and the Annual Report Form expire on 9/30/87.

The primary author of this document is Ms. Esther Whalen, Chief, Branch of Postsecondary Education, Office of Indian Education Programs, telephone number (202) 343-4871.

The Department of the Interior has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969. These revised regulations do not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 606 *et seq.*). These regulations will affect only the delivery of higher education services to eligible individual Indian students. They will not have an impact on small entities as defined in the Act.

List of Subjects in 25 CFR Part 40

Grant programs-education, Grant programs-Indians, Indians-education, Loan programs-education, Loan programs-Indians Student aid.

The Bureau of Indian Affairs previously defined all applicants for assistance under the Higher Education Grant Program to mean a person who is recognized as a member of an Indian tribe by the Secretary of the Interior, and who has at least one-fourth degree Indian blood, Alaska Native, Eskimo or Aleut blood (Alaska Native). However, the U.S. Court of Appeals for the Ninth Circuit has ruled that such ¼ blood requirement is not in accordance with the authorizing statute, *Zarr v. Barlow*, No. 85-2170 (September 30, 1986). Therefore, the quarter blood requirement is being removed. Comments are especially desired on this section of eligibility.

Regulations governing the Bureau of Indian Affairs Special Higher Education Program, which provides financial assistance to American Indian and

Alaska Native students pursuing graduate degrees at the masters, doctoral and law degree levels, will be added as an amendment to this rule in fiscal year 1988. This amendment will establish eligibility requirements, academic requirements, repayment provisions, priority fields of study and administrative cost allowances.

Accordingly, it is proposed to revise Part 40 of Subchapter E of Chapter I, Title 25 of the Code of Federal Regulations by submitting a new title as set forth below and the revised Part 40 to read as follows:

PART 40—ADMINISTRATION OF THE HIGHER EDUCATION GRANT PROGRAM

Subpart A—General Provisions

- Sec.
- 40.1 Purpose and scope.
 - 40.2 Definitions.
 - 40.3 Program objective.
 - 40.4 Information collection.
 - 40.5 Prioritization of grants.

Subpart B—Direct Student Grants

- 40.11 Types and availability of Bureau awards.
- 40.12 Administrative cost allowance under Public Law 93-638.
- 40.13 Eligible applicants.
- 40.14 Application forms.
- 40.15 Closing dates for filing applications.
- 40.16 Application for campus-based aid and other sources of financial assistance.
- 40.17 Determination of eligibility and amount of grant.
- 40.18 Application review.
- 40.19 Notification of grant award or rejection.
- 40.20 Payment of grant.
- 40.21 Return or refund of Bureau grant funds.
- 40.22 Effect of termination of enrollment.
- 40.23 Repayment of Bureau grant funds.
- 40.24 Academic requirements for continuance of grant.
- 40.25 Effect of academic probation or suspension on grant.
- 40.26 Maximum period of eligibility for Bureau grants.
- 40.27 Records and reporting.

Authority: 43 U.S.C. 1457; 25 U.S.C. 2, 9, and 13, and the Reorganization Plan No. 3 of 1950 (65 Stat. 1262).

Subpart A—General Provisions

§ 40.1 Purpose and scope.

The purpose of these regulations is to provide uniform procedures, accountability and responsibility of Bureau of Indian Affairs federal funds to govern the Higher Education Grant Program administered under authority of the Snyder Act of November 2, 1921 (25 U.S.C. 13).

§ 40.2 Definitions.

"*Academic year*" means a period of time in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters or three quarters at higher education institutions that measure academic progress in credit hours and use a semester, trimester or quarter system.

"*Accredited*" means that an institution of higher education is accredited at the college level by a nationally recognized accrediting agency or association recognized by the Secretary of Education.

"*Assistant Secretary*" means the Assistant Secretary—Indian Affairs, Department of the Interior or his/her designee.

"*Bureau*" means the Bureau of Indian Affairs (BIA).

"*Campus-based aid*" means the Federal financial aid program (i.e., Supplemental Educational Opportunity Grants (SEOG), College Work-Study (CWS), and National Direct Student Loans (NDSL)) administered by the financial aid officer at an institution of higher education.

"*College level*" means a postsecondary associate, baccalaureate, or post-baccalaureate program.

"*Continuing student*" means a grant recipient who attended college the previous term and is reapplying for the next academic term.

"*Department of Education*" means the United States Department of Education.

"*Director*" means the Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs), Bureau of Indian Affairs.

"*Eligible institution*" means an institution of higher education that holds accredited or preaccredited status or has qualified under the "three-institutional-certification method" established by section 1201(a)(5)(B) of the Higher Education Act of 1965 (20 U.S.C. 1141).

"*Financial aid officer*" means the officer of an institution of higher education who has responsibility for institutionally administered financial aid, including Department of Education aid.

"*Financial aid package*" means the package of student aid from various types of resources, including Department of Education aid but not including Bureau grants, prepared and awarded by the financial aid officer.

"*Full-time student*" means an enrolled student who is carrying a full-time academic workload (other than by correspondence) as determined by the eligible institution and applicable to all students enrolled in a particular program, such as:

(a) Twelve semester or 12 quarter hours per academic term in those higher education institutions using standard semester, trimester, or quarter hour systems; and

(b) Twenty-four semester or 36 quarter hours per academic year for higher education institutions using standard semester, trimester, or quarter hour systems, or the prorated equivalent for programs of less than one academic year.

"*Higher Education Office*" means either the Bureau or tribal office administering funds appropriated to the Bureau for higher education grants to Indian students.

"*Indian*" means a person who is a member of an Indian tribe and who is eligible to receive services from the Secretary of the Interior.

"*Indian tribe*" means any Indian tribe, band, nation, rancheria, pueblo, colony, or community, which is Federally recognized by the United States Government through the Secretary of the Interior for special programs and services provided by the Secretary to Indians because of their status as Indians.

"*Near reservation*" means those areas or communities adjacent or contiguous to reservations which are designated by the Assistant Secretary upon recommendation of the local Bureau Superintendent, which recommendation shall be based upon consultation with the tribal governing body of those reservations, as locales appropriate for the extension of financial assistance and/or social services, on the basis of such general criteria as: (1) Number of Indian people native to the reservation residing in the areas, (2) a written designation by the tribal governing body that members of their tribe and family members who are Indians residing in the area, are socially, culturally and economically affiliated with their tribe and reservation, (3) geographical proximity of the area to the reservation, and (4) administrative feasibility of providing an adequate level of services to the area. The Commissioner shall designate each area and publish the designations in the *Federal Register*.

"*Part-time student*" means an enrolled student who is carrying a part time academic workload (other than by correspondence) as determined by the eligible higher education institution and applicable to all students enrolled in a particular program.

"*Pell Grant Program*" means the program of financial aid for undergraduate students authorized by Title IV-A Subpart 1 of the Higher Education Act of 1965, as amended and

governed by regulations contained in 34 CFR Part 690.

"Preaccredited status" means the classification made by a nationally recognized accrediting agency or association upon determining that a higher education institution is progressing toward accreditation.

"Program Plan" means an individualized course of study in which the student, in conjunction with the degree granting institution of higher education, outlines the required courses for the desired degree.

"Public Law 93-638" means the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*).

"Scholarship officer" means the person authorized to administer funds appropriated to the Bureau for higher education grants to Indian students.

"Secretary" means the Secretary of the Interior.

"Summer school" means the school session conducted during the summer months enabling students to accelerate progress toward a degree, to make up credits, or to round out professional education.

"Three-institutional-certification method" means the process wherein the Secretary of Education verifies that not fewer than three accredited college level institutions have accepted and do accept an unaccredited college's credits, upon transfer, as though coming from an institution of higher education accredited by a nationally recognized accrediting agency or association.

"Tribal contractor" means an Indian tribe or organization which has contracted with the Bureau of Indian Affairs for the administration of the Higher Education Grant Program under the authority of Pub. L. 93-638.

"Undergraduate" means a student enrolled in an undergraduate course of study at an institution of higher education who:

(a) Has not been awarded a baccalaureate or first professional degree; and

(b) Is in an undergraduate course of study that usually does not exceed four academic years, or is enrolled in a five academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first four academic years of that program.

"Unmet Need" means the difference between the students cost of education and the resources available to defray those costs. Resources available include contributions from the student; and, if dependent, the students parents; as well as federal, State and institutional

financial aid, but excludes Bureau grants.

§ 40.3 Program objective.

The objective of the Bureau of Indian Affairs' Higher Education Grant Program is to provide financial aid to eligible Indian students to obtain an undergraduate degree or certificate from an accredited institution of higher learning within a reasonable time frame.

§ 40.4 Information collection.

This information collection requirements contained in § 40.14 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1076-0099 and 1076-0101. The information is collected to determine the eligibility of Indian student applicants. The information will be used to award grants to Indian students for college assistance.

§ 40.5 Prioritization of grants.

(a) If a tribe contracting for the operation of a higher education program desires to set program priorities within these standards for categories of applicants, these priorities, in order to be given effect, must be set out in the application materials provided to grant applicants, made part of the contract application, and submitted for approval to the Director, who shall have 30 days after receipt within which to respond, to assure compliance with the regulations as set out in this Part. This tribal program priority plan shall include

- (1) The listing of priorities;
- (2) The reason; and
- (3) Supporting documentation.

(b) If a tribe desires to set a higher academic standard by increasing the minimum GPA or academic hours needed in order to be classified as a full-time student, the tribe may do so.

(c) The Director shall notify the tribe and contracting officer, in writing, of his/her comments regarding the tribe's program priority plan, prior to the negotiation of the higher education contract. If the Director disapproves of the tribal program priority plan, because it contravenes the regulations, he/she must so inform the tribe indicating the revisions necessary to comply with the regulations.

(d) The priority plan will be subject to the requirement in § 40.15(b) of Subpart B.

Subpart B—Direct Student Grants

§ 40.11 Types and availability of Bureau awards.

(a) Bureau awards to undergraduate students shall be referred to as undergraduate grants.

(b) All undergraduate grant applications shall be processed in accordance with the provisions of these regulations.

(c) All grants made under this Part shall be subject to the availability of appropriations.

§ 40.12 Administrative cost allowance under Public Law 93-638.

Tribal contractors operating a program under Pub. L. 93-638 are entitled to administrative cost allowances.

(a) The amount of the allowance shall not exceed 15 percent of the higher education allocation for that fiscal year. At least 85 percent of the higher education allocations must be used for grants to eligible students.

(b) The higher education office must use its administrative cost allowance to offset its costs of administering the Higher Education Grant Program and for repayment collection costs.

(c) These administrative costs include salaries and fringe benefits for direct program administration positions such as scholarship officer(s), clerical personnel, counselors, as well as travel costs, materials, supplies, equipment, and rents. The remainder of funds after administrative costs are deducted, must be used for grants to eligible students.

§ 40.13 Eligible applicants.

To be eligible for assistance from funds appropriated to the Bureau for higher education, an applicant must:

- (a) Be an Indian as defined in § 40.2;
- (b) Be admitted for enrollment in an eligible institution of higher education;
- (c) Students who reside near or within the exterior boundaries of the Indian reservations under the jurisdiction of the Bureau of Indian Affairs or on trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs shall receive first priority in funding. After students meeting these eligibility requirements are taken care of, Indian students who do not meet the residency requirements but are otherwise eligible may be considered.

(d) Have financial need as determined by the eligible institution's financial aid office according to the U.S. Department of Education's standard formula used to evaluate information the student supplies on their standard application form as required under 34 CFR Part 668, Student Assistance General Provisions;

(e) Have a cumulative 2.0 Grade Point Average (GPA) on a 4.0 grade point scale (or the equivalent) upon completion of his/her freshman year and a 2.0 GPA on a 4.0 grade point scale (or the equivalent) if he/she is a

continuing student i.e., sophomore, junior or senior; and

(f) Apply for all available campus-based aid in a timely manner.

§ 40.14 Application forms.

The "Bureau of Indian Affairs Higher Education Application" (Grant Application Form, OMB Number 1076-0101) form and the "Financial Aid Package Form" (OMB Number 1076-0099) shall be used by all applicants for grants under this Part in accordance with the requirements of the Paperwork Reduction Act, section 3504(h) of Pub. L. 96-511. Such forms shall be available at Bureau Agency and Area Offices, and tribal contract higher education offices administering this program.

§ 40.15 Closing dates for filing applications.

(a) Application for a Bureau grant may be submitted to the appropriate higher education office beginning January 1 and must be received no later than:

(1) March 15, for the fall term or for the next academic year;

(2) October 1, for applicants beginning the second semester, second or third quarter, or second or third trimester;

(3) April 1, for applicants wishing to attend summer school.

(b) After meeting the eligibility criteria set out in § 40.13 of this Part and unless otherwise announced in the grant application material furnished to applicants for grants, applications shall be considered solely on the basis of meeting the standards set out in this Part and processed in the order of their receipt.

(c) Any applications received after the stated closing date will be considered only if funds remain available after grants are made to eligible applicants who met the deadline.

(d) Continuing students must reapply for grants each academic year. A separate application must be made for summer school.

(e) Offices receiving applications shall acknowledge receipt in writing within 10 business days.

§ 40.16 Application for campus-based aid and other sources of financial assistance.

In order to meet the eligibility requirements under § 40.13 and to assure consideration for funding, an applicant must begin in January the application process for the Pell Grant Program, campus-based aid programs and, if available, State grant aid, in order to meet college admission deadlines with the completed application materials. Although not required to do so, applicants are encouraged to apply for private financial

aid. For the student to become qualified and to receive financial aid, the financial aid officer must complete and forward the Bureau's Financial Aid Package Form to the student's higher education office.

§ 40.17 Determination of eligibility and amount of grant.

Primary responsibility for determining an applicant's eligibility and, if eligible, the size of the grant to be made under this Part, rests with the scholarship officer who works with the student's approved higher education office. Those determinations shall be made by the scholarship officer on the basis of review of the application as provided in § 40.18, subject to the availability of appropriated funds.

§ 40.18 Application review.

(a) Completed applications shall be processed in the order in which they are received. Applications shall be reviewed on an individual basis and approved by the scholarship officer. The scholarship officer shall first determine, applying the standards in §§ 40.13 through 40.16, whether the applicant is eligible for a grant. A complete application consists of the following:

(1) A fully completed Bureau Higher Education Grant Application Form;

(2) A Certificate of Degree of Indian Blood (CDIB) certifying that the applicant is a member of an Indian tribe (new applicants only);

(3) A letter of acceptance from an eligible institution (new applicants, transfers, and previously suspended students);

(4) A high school transcript or General Education Development (GED) high school equivalency certificate (new applicants);

(5) Grades, transcripts or a progress report from the previous term/year of attendance (continuing students); and

(6) A "Financial Aid Package" form prepared and certified by the college financial aid officer indicating the student's unmet needs based upon his/her individual budget, resources, and awards.

(b) The Scholarship Officer shall review each completed application, including the financial aid package prepared by the financial aid officer. Scholarship officers are to consult with financial aid officers where any special situation of a student's financial need is not clear from the financial aid package. Any changes or additions made pursuant to this consultation must be supported with appropriate documentation from the applicant or other directly involved party.

(c) Upon finding that the applicant is eligible for assistance, the scholarship officer may award students a maximum grant of the unmet need or up to one-third of the total cost of education, whichever is less, at the eligible institutions they are attending. If program funds are available, such grants may then exceed this limitation if an unmet need still exists after the Bureau grant and all campus-based aid and other financial aid under § 40.16 are considered. Bureau awards for students attending private in-state or out-of-state institutions, and those attending public out-of-state institutions shall not exceed the amount awarded by the Bureau to students attending public institutions in their state of residence.

(d) Students accepting a grant award must be advised of their responsibilities as set out in §§ 40.22 through 40.25 under this Part. An outline of these responsibilities will be provided as part of the application procedures.

§ 40.19 Notification of grant award or rejection.

The scholarship officer shall notify each applicant, and the financial aid officer, in writing of his/her determination with supporting reason for such determination.

§ 40.20 Payment of grant.

(a) Grants made by the scholarship officer shall be paid by check to the applicant in care of the financial aid office of the eligible institution in which he/she is enrolled on a semester, trimester or quarterly basis.

(b) Financial aid officers shall disburse grants made under this Part to their recipients according to the disbursement policy of the eligible institution.

(c) Grants are not to be used for repayment of educational loans.

§ 40.21 Return or refund of Bureau grant funds.

The eligible institution shall return or refund Bureau grant funds to the appropriate higher education program office as follows:

(a) When a student officially withdraws, drops out, or is expelled, the eligible institution of higher education immediately returns any undisbursed Bureau grant checks.

(b) When the institution has disbursed a portion of the Bureau grant check under paragraph (a) of this section, the eligible institution shall immediately refund the balance of the Bureau grant awards. Students receiving a disbursement are responsible for repayment under § 40.23.

(c) With supportive documentation substantiated by such permanent school records as class attendance, taking of meals, or residing in the residential program, an institution of higher learning will determine the final date of a student's enrollment if the student fails to officially withdraw from school. If the institution of higher education or the scholarship officer cannot document the date that the student withdrew, the student is considered to have withdrawn before the first day of class and is responsible for repayment under § 40.23. Any balance of Bureau grant funds remaining at the eligible institution of higher education for that student shall be refunded.

§ 40.22 Effect of termination of enrollment.

(a) A grant recipient who without justifiable circumstances fails to enroll, officially or unofficially withdraws, or is expelled before completion of the academic term, semester, trimester, or quarter, or fails to meet the academic standards required by § 40.25 during a probation period, shall repay the grant awarded for that term only, minus any portion which may have been refunded by the eligible institution of higher learning, to the higher education office making the award.

(b) A grant recipient who does not enroll, who withdraws, or who is expelled during an academic term shall submit a written notification within 10 days of his/her failure to enroll, withdrawal or expulsion to his/her higher education office with the following information:

(1) The date of withdrawal or expulsion;

(2) A written statement, with supporting documentation, stating his/her reason for withdrawal or the reason for the expulsion for that academic term including mitigating circumstances, if any; and

(3) A copy of the student's request made to the eligible institution to return, by check or money order payable to the Bureau of Indian Affairs or the tribe, whichever is appropriate, any remaining balance of the Bureau grant for that academic term.

(c) The student must demonstrate justifiable circumstances to avoid repayment of the grant amount expended upon termination of enrollment for that academic term. Failure to provide documentation for justifiable circumstances will result in termination of the student's eligibility for future higher education grant awards and require the student to repay any outstanding grant award for that academic term only. These justifiable

circumstances include, but are not limited to:

(1) Withdrawal due to a student's medically diagnosed condition which impairs the student's ability to attend school or pursue a course of study. In this case, the student must provide documentation from his/her physician; and

(2) Individual circumstances that constitute for the student an undue hardship which will significantly hamper the student's academic success (e.g., illness and/or death in the family).

(d) Determination of repayment due to a student's termination of enrollment for that academic term:

(1) The scholarship officer shall review, within 30 days, the terminating student's reason(s) for termination to determine if the grant must be repaid.

(2) Within 30 days of the student termination, the scholarship officer must notify the student in writing whether or not the student is required to repay the grant awarded during that academic term.

§ 40.23 Repayment of Bureau grant funds.

Repayment of Bureau grants shall be required under the conditions determined in § 40.22 of this Part by the appropriate higher education office as follows:

(a) Bureau/tribal contract programs must notify the student of the pending grant repayment. This notification shall include:

(1) Reason(s) for repayment; and
(2) The amount of the repayment and identification of the designated academic term for which he/she withdrew and must repay. A student's ability to pay back money would determine the schedule of repayment.

(b) The repayment shall begin three months after the written notification date under § 40.22(d)(2) as determined by the scholarship officer, and continue at the same rate for each month.

(c) The repayment period shall not exceed two years for each award increment of \$1,000.

(d) The student may pay the entire amount or any part of the amount due for repayment at any time before the payment is due.

(e) No further higher education applications shall be processed for a student under this Part until he/she repays the amount awarded for the single term when he/she withdrew without cause.

(f) The billing procedures for grant repayment shall be:

(1) The scholarship officer must establish an amortized repayment schedule for the student and maintain

the following billing and follow-up procedures until the grant is repaid:

(i) Notify the student by letter and a statement of account 30 days before the first payment is due; and

(ii) Send a statement of account 10 days before the due date of each repayment after the first.

(2) The responsible scholarship officer must contact the student and demand repayment if it has not been received within 15 days of a due date as follows:

(i) Within 15 days of a missed due date, the scholarship officer must contact the student by telephone or in writing to demand repayment (first overdue notice).

(ii) Within 30 days of the first overdue notice, if there is no satisfactory response, the scholarship officer must contact the student again by telephone, mailgram or similar written communication (second overdue notice).

(iii) Within 15 days of the second overdue notice, the scholarship officer must contact the student again by telephone, mailgram or similar written communication that demonstrates a response rate higher than that for routine mail (third overdue notice).

(iv) Within 15 days of the third overdue notice, the scholarship officer must send the final demand letter if there is no satisfactory response to the third overdue notice. In this letter the scholarship officer must inform the student that the grant amount, including any administrative costs involved with this collection, will be referred for collection if repayment is not received within 30 days of the letter's date.

§ 40.24 Academic requirements for continuance of grant.

Grant recipients shall meet the following requirements for academic progress for continued grant awards:

(a) Full-time grant recipients must complete 12 or more quarter/semester hours in the course of study in which the student is enrolled, while part-time recipients must fulfill the same requirements ratably adjusted to their part-time status.

(b) All grant recipients must achieve and maintain a cumulative GPA of 2.0 on a 4.0 grade point scale (or the equivalent) or better upon completion of freshman year, and 2.0 on a 4.0 grade point scale (or the equivalent) or better for sophomore, junior and senior years in each academic term.

§ 40.25 Effect of academic probation or suspension on grant.

(a) All grant recipients shall continue to be eligible for a higher education grant as long as they maintain the

academic requirements stipulated by the program, subject to the time limitations set forth in § 40.26.

(1) All grant recipients are required to submit timely grade reports as issued by the college/university for each term to their respective higher education offices. The deadline date for grant payments will not be altered; therefore, failure to meet this requirement will delay the grant payment or cause it to be rescinded.

(2) A grant recipient who does not meet the minimum academic requirements will be placed on academic probation for the following academic term. Upon receipt of the student's grades for that term the scholarship officer shall notify the student in writing of the reason(s) for placing the student on probation.

(3) A grant recipient on academic probation must complete 12 or more quarter/semester hours during which time both the cumulative average and term average GPA must be brought to the standard specified in § 40.24(b).

(4) A grant recipient's failure to meet the academic requirements in paragraph (a)(3) of this section shall result in suspension from Bureau funding under this Part. Failure to meet the minimum academic requirements for the probation period will result in repayment of the grant award for that academic term. Exceptions to this Part shall be made only as set forth in §§ 40.22(c) and 40.23. The scholarship officer shall notify the student, in writing, the reason(s) for this action.

(5) A grant recipient who is suspended from Bureau funding shall not be considered for future funding under this Part until the recipient, utilizing other funding sources, completes a minimum of 12 credit hours per term with a cumulative and term GPA of 2.0 upon completion of his/her freshman year and 2.0 for sophomores, juniors and seniors.

(6) A grant recipient who has received a higher education grant for two years shall provide an official transcript of his/her college work to the responsible scholarship officer who will evaluate the student's progress toward the completion of postsecondary degree requirements.

(b) Part-time students shall be subject to the same requirements set out in this section.

§ 40.26 Maximum period of eligibility for Bureau grants.

(a) When a student pursuing a first time degree cannot complete either a four year or a five year baccalaureate degree program within the required time frame, the affected student must submit a student program plan along with an official transcript of completed course work for review by his/her scholarship officer. The scholarship officer shall review the transcript and program plan to determine if the student is eligible for an extension of one academic year to complete his/her baccalaureate degree. Such criteria as the field of study, number of labs required, if on-the-job training is required, etc., will be considered in determining whether or not an extension will be granted. In no case shall this extension exceed more than one academic year beyond their program plan.

(b) Students who cannot completely meet associate degree requirements within two academic years due to the design of the program must submit a transcript of grades and a program plan to the scholarship officer. The scholarship officer shall review the transcript and program plan to determine if the student is eligible for an extension of one academic year to complete his/her associate degree. The same criteria as in § 40.26(a) shall be used for making this determination. In no case shall this extension exceed one academic year.

(c) Part-time students shall be subject to the same requirements ratably adjusted to their part-time status.

§ 40.27 Records and reporting.

(a) Annual reports for the Higher Education Grant Program shall be submitted to the Director by the higher education office by December 1 of each year for the preceding fiscal year.

(b) Each higher education office shall maintain student files, a ledger of all costs, and related records necessary to identify all transactions involving expenditures of Bureau funds under this Part. Such records shall:

(1) Afford ready identification of each recipient's award and status;

(2) Be adequate to demonstrate the eligibility of every student who is being assisted by the Program;

(3) Show the amount of need determined for each award recipient and the manner in which the need was calculated and met;

(4) Identify the scholarship officer who makes the determination of such need; and

(5) Identify the students who have terminated their enrollment and the status of their repayment records.

(c) Each higher education office shall submit, on an annual basis, updated data into the Bureau's management information system for each grant recipient.

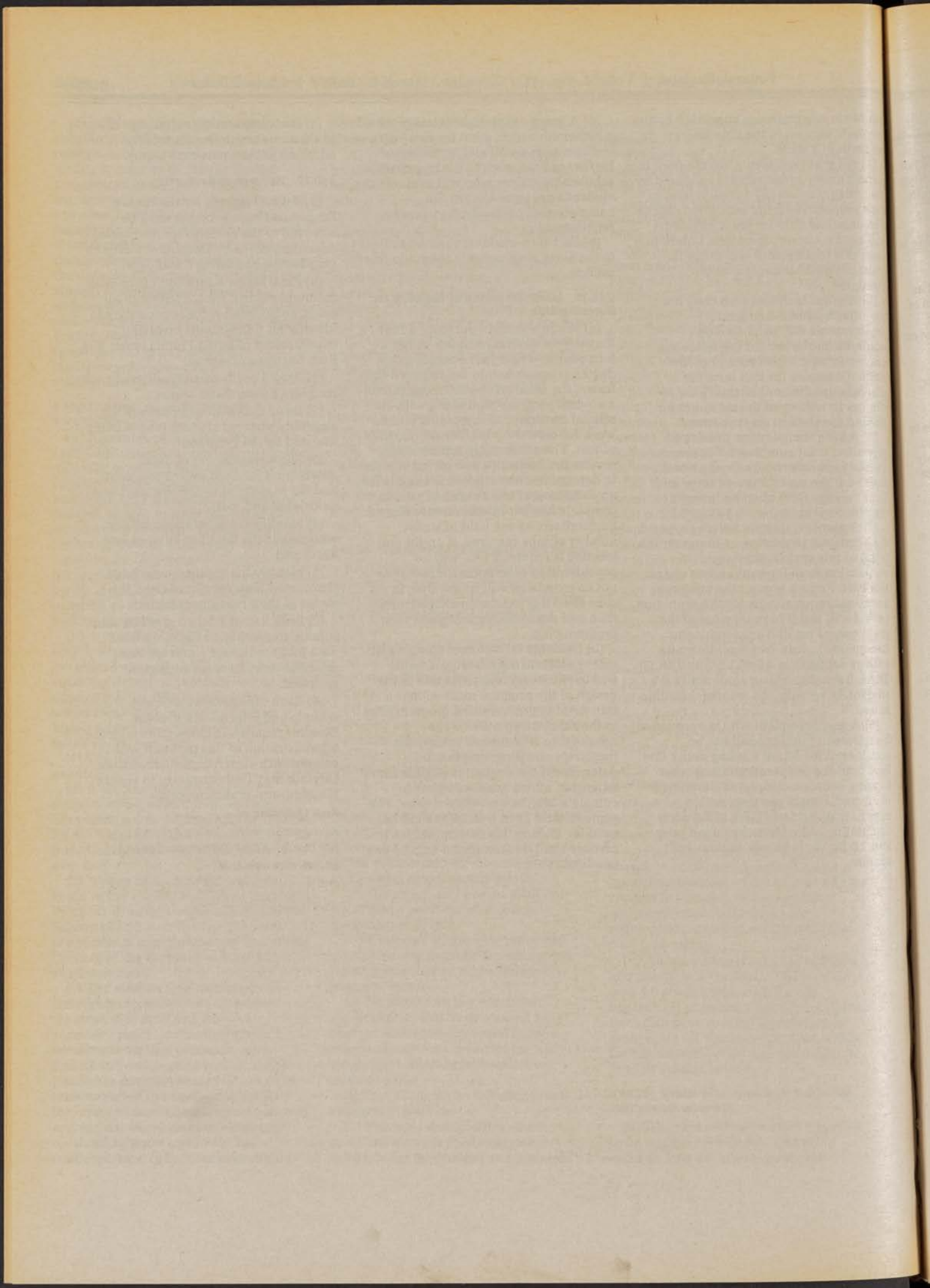
(d) Each office will submit any records and information that the Director requires in connection with the administration of this part and will comply with such requirements as the Director may find necessary to ensure the accuracy of such reports.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 87-4220 Filed 3-2-87-8:45 am]

BILLING CODE 4310-02-M



Beef Market Letter

**Tuesday
March 3, 1987**

Part V

Department of Agriculture

Agricultural Marketing Service

Beef Promotion and Research; Certification and Nomination Notice for the Cattlemen's Beef Promotion and Research Board

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Beef Promotion and Research;
Certification and Nomination Notice
for the Cattlemen's Beef Promotion
and Research Board

AGENCY: Agricultural Marketing Service,
USDA.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture's Agricultural Marketing Service (AMS) is accepting applications from State cattle producer and beef importer organizations and others for certification for eligibility to nominate producers or importers for appointment to vacant positions on the Cattlemen's Beef Promotion and Research Board. Organizations which have not previously been certified that are interested in submitting nominations must complete and submit an official application form to AMS. Previously certified organizations *do not* need to reapply.

EFFECTIVE DATE: Applications for Certification must be received by close of business on April 10, 1987.

ADDRESS: Certification forms as well as copies of the certification and nomination procedures may be requested from Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th and Independence Avenue, SW., Room 2610-S; Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT:
Ralph L. Tapp, (202) 447-2650.

SUPPLEMENTARY INFORMATION: The Beef Promotion and Research Act of 1985, approved December 23, 1985, authorizes the implementation of a national Beef Promotion and Research Order. The order, as published in the July 18, 1986, *Federal Register* (51 FR 26132), provides for the establishment of a Cattlemen's Beef Promotion and Research Board. The Cattlemen's Beef Promotion and Research Board consists of 108 cattle producers and five importers appointed by the Secretary. The duties and responsibilities of the Board are specified in the order.

The Act and the order provide that the Secretary shall either certify or otherwise determine the eligibility of State or importer organizations or associations to nominate members to the Board to ensure that nominees represent the interests of cattle producers and importers. Nominations for importer representatives may also be made by individuals who import cattle,

beef, or beef products. Individual importers do not need to be certified as eligible to submit nominations. When individual importers submit nominations, they must establish to the satisfaction of the Secretary that they are in fact importers of cattle, beef or beef products, pursuant to § 1260.143(b)(2) of the order (7 CFR 1260.143(b)(2)). Certification and nomination procedures were promulgated in the final rule, published in the April 4, 1986, *Federal Register* (51 FR 11557). Organizations which were certified in 1986 to nominate members to the initial Board *do not* need to reapply for certification to nominate producers and importers for the existing vacancies.

The Act and the order provide that the members of the Board shall serve for terms of three (3) years, except that members appointed to the initial Board shall serve, proportionately, for terms of 1, 2, and 3 years. The order also requires USDA to announce when a Board vacancy does or will exist. Since the initial Board was appointed on August 4, 1986, there will be vacancies in those States or units whose producer or importer representatives were appointed to the initial Board for a 1-year term. The 38 vacancies by State or unit are as follows:

State or unit	Number of vacancies
Alabama	1
Arkansas	1
California	1
Colorado	1
Florida	1
Georgia	1
Idaho	1
Illinois	1
Indiana	1
Iowa	1
Kansas	2
Kentucky	1
Minnesota	1
Missouri	2
Montana	1
Nebraska	2
New York	1
North Dakota	1
Ohio	1
Oklahoma	2
Oregon	1
Pennsylvania	1
South Dakota	1
Tennessee	1
Texas	5
Virginia	1
Wisconsin	1
Northwest Unit (AK, HI, WA)	1
Importers	2

Since there are no anticipated vacancies on the Board for the remaining States' positions, or for the positions of the Northeast Unit and the

Mid-Atlantic Unit, nominations will not be solicited from certified organizations or associations in those States or units.

Uncertified, eligible producer organizations in all States that are interested in being certified as eligible to nominate cattle producers for appointment to the listed producer positions must complete and submit an official "Application for Certification of Organization or Association," which must be received by close of business on April 10, 1987. The "Application for Certification of Organization or Association" is included herein. It may be reproduced. Uncertified, eligible importer organizations that are interested in being certified as eligible to nominate importers for appointment to the listed importer positions must apply by the same date. Importers should not use the application form, but should provide the requested information by letter, as provided for in 7 CFR 1260.540(b). Applications from States or units without vacant positions on the Board and other applications received after April 10, 1987, will be considered for eligibility to nominate producers or importers for subsequent vacancies on the Board.

Only those organizations or associations which meet the criteria for certification of eligibility promulgated at 7 CFR 1260.530, which were published in 51 FR 11557, 11559 (April 4, 1986) are eligible for certification. Those criteria are:

(a) For State organizations or associations—

(i) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit.

(ii) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit.

(iii) There must be a history of stability and permanency.

(iv) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(b) For organizations or associations representing importers, the determination by the Secretary as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information—

(i) The number and type of members represented (i.e., beef, or cattle importers, etc.).

(ii) Annual import volume in pounds of beef and beef products and/or the number of head of cattle.

(iii) The stability and permanency of the importer organization or association.

(iv) The number of years in existence.

(v) The names of the countries of origin for cattle, beef, or beef products imported.

All certified organizations and associations, including those which were previously certified in the States or

units, having vacant positions on the Board will be notified simultaneously in writing of the beginning and ending dates of the established nomination period and will be provided with required nomination forms and biographical data sheets.

The names of qualified nominees received by the established due date

will be submitted to the Secretary of Agriculture for consideration as appointees to the Cattlemen's Beef Promotion and Research Board.

Done at Washington, DC, on: February 26, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

BILLING CODE 3410-02-M

Information is collected in order to determine eligibility of organizations or associations to nominate cattle producers to serve as members of the Board. Application is voluntary and information is held confidential (Beef Promotion and Research Act of 1985).

U.S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

APPLICATION FOR CERTIFICATION OF ORGANIZATION OR ASSOCIATION

Form Approved
OMB NO. 0581-0152
Expires 12-31-88

Organizations or associations must apply for certification by the Secretary to be eligible to participate in the making of nominations of cattle producers to serve as members of the Cattlemen's Beef Promotion and Research Board as provided in the Beef Promotion and Research Act of 1985. Information submitted in response to all items must be complete. Please type or print clearly. Send original only to:

Marketing Programs and Procurement Branch
Livestock and Seed Division, AMS
U. S. Department of Agriculture, Room 2610-S
Washington, DC 20250

1. NAME AND ADDRESS OF ORGANIZATION (Street address or P.O. Box No., City, State, ZIP)		2. TYPE OF ORGANIZATION ("X" one) <input type="checkbox"/> Cattle Assoc. <input type="checkbox"/> General Farm Organization <input type="checkbox"/> Other (Specify)	
3. STATE		TEL. (AC.....)	
4. TOTAL PAID MEMBERSHIP (Most RECENT FULL calendar year) IN 198__ NO. _____	5. NUMBER OF PAID MEMBERS ENGAGED IN CATTLE PRODUCTION (Most RECENT FULL calendar year) IN 198__ NO. _____	6. TOTAL ESTIMATED INVENTORY OF CATTLE OWNED BY PAID MEMBERS (Most RECENT FULL calendar year) AS OF JAN. 1, 198__ NO. _____	
7. AS EVIDENCE OF THE STABILITY AND PERMANENCY OF THE ORGANIZATION, GIVE:			
A. No. of Years In Existence	B. No. of Paid Members during each of the last four calendar years:		
	198__	198__	198__
	No. →		
C. Other Evidence (Explain)			

I hereby certify that: (1) a primary or overriding purpose of this organization or association is to promote the economic welfare of cattle producers, and (2) the information provided in response to the above items is true, complete, and correct to the best of my knowledge. The Secretary of Agriculture may examine our books, documents, papers, records, files, and facilities to verify any of the information submitted and may procure such other information as may be required to determine this organization's or association's eligibility for certification.

8. NAME AND TITLE OF PERSON COMPLETING THIS APPLICATION (Type or print)	9. DATE	10. SIGNATURE

[FR Doc. 87-4410 Filed 3-2-87; 8:45 am]

BILLING CODE 3410-02-C

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Vol. 52, No. 41

Tuesday, March 3, 1987

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